PO-18805

# Ombudsman's Determination

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| Applicant | Mr P |
| Scheme | EDF Energy Generation & Supply Group of the ESPS (**the Scheme**) |
| Respondents | The Trustees of the EDF Energy Generation and Supply Group of the ESPS (**the Trustee**)<br>EDF Energy (**the Employer**)<br>Mercer plc (**Mercer**) |

## Outcome

1. I do not uphold Mr P's complaint and no further action is required by the Trustee, the Employer or Mercer.

## Complaint summary

2. Mr P's complaint is that he should not have been required by the Trustee to opt-out of the Scheme, in order to request a transfer. He also says that the Trustee unreasonably delayed processing his transfer request and that this delay caused him financial loss as well as distress and inconvenience.

## Background information, including submissions from the parties

3. The Scheme is governed by the Electricity Supply Pension Scheme scheme-wide rules (**the Scheme Rules**), which are partly amended by the EEGS Schedule to the Scheme Rules (**the EEGS Schedule**).

4. Scheme Rule 17 (2) (b) states that:-

> "A transfer payment, which shall not be less than the Underlying Minimum Guarantee, shall be made in respect of any member who leaves Service with a right to require a cash equivalent transfer payment to be made in respect of him, receives no repayment under paragraph (3), becomes a member of a Personal Pension Scheme or takes out a Section 32 Policy, requests such a payment to be made and surrenders his entitlement (if any) to Benefits…"

5. Rule 2A of the EEGS Schedule states that:-

> "Notwithstanding any other provision of the Scheme, the Principal Employer may, in its discretion, approve an application for membership made by any employee and upon and subject to such terms and conditions as it may determine."

6. On 8 July 2016, Mr P wrote to Mercer (the Scheme administrator) saying that he would like to opt-out of the Scheme and transfer his pension after taking a lump sum. The Trustee says that neither Mr P nor his financial adviser (**the Adviser**) queried the requirement for Mr P to opt-out of the Scheme, before he made that decision.

7. On 12 July 2016, Mercer informed Mr P that a cash equivalent transfer value (**CETV**) quotation would be issued to him after two further salary payment months had passed.

8. On 25 July 2016, Mr P received confirmation from the Employer that it had received his completed opt-out form. Mr P's contributions to the Scheme then ceased from 1 August 2016. The terms that Mr P agreed for opting-out included:-

   - In the event of my death, the lump sum life assurance benefit will reduce from four to one time pensionable basic salary, and no spouse's/children's pension(s) will be payable from the Scheme…
   - By making this decision, my service with the Company will be non-pensionable…
   - It will not be possible to re-join the Scheme at a later date.

9. On 1 September 2016, Mercer emailed the Employer to query why Mr P's contributions had ceased in August 2016 and reduced contributions were received in June and July 2016. The Employer replied that reduced contributions were received because Mr P was on sick leave in June and July 2016. The Employer did not tell Mercer that Mr P's contributions had ceased in August 2016 because he had opted-out of the Scheme.

10. Consequently, Mercer wrote to Mr P on 6 September 2016, stating that a transfer would not be allowed until he had opted-out of the Scheme and that he needed to return a completed opt-out form.

11. Mr P then contacted the Employer who advised Mercer, on 15 September 2016, that Mr P had opted-out of the Scheme from 31 July 2016.

12. In accordance with the Scheme's normal procedures Mercer waited until two payroll runs had passed since Mr P had opted-out of the Scheme and, on 5 October 2016, sent a CETV quotation to Mr P.

13. On 10 November 2016, Mercer emailed Mr P to confirm that all the required documentation for the transfer had been received. Mercer said that the transfer would

not be processed until Mr P's Additional Voluntary Contribution (**AVC**) fund had been received from the AVC provider, Aviva. Mercer expected to receive the AVC funds within 10 days of writing to Aviva to request the payment.

14. On 24 November 2016, Mr P emailed Mercer to query when the transfer would be processed and the exact value of it.

15. On 25 November 2016, Mercer responded and said that it was awaiting disinvestment of Mr P's AVC funds by Aviva, before the transfer could be completed.

16. On 2 December 2016, the Adviser emailed Mercer to query whether the transfer had been completed.

17. On 8 December 2016, Mercer replied to the Adviser that it had called Aviva the same day and received confirmation that Mr P's case had been referred to Aviva's actuary on 30 November 2016. However, Aviva said it could take between 10 and 20 working days for the required calculations to be performed. Mercer said that it expected to receive Mr P's AVC funds between 14 and 28 December 2016.

18. On 15 December 2016, Mercer chased Aviva and was informed that payment should be made by 19 December 2016.

19. On 23 December 2016, Mercer received Mr P's AVC fund from Aviva.

20. The transfer was completed on 16 January 2017 and Mercer wrote to the Adviser confirming that a payment of £301,848.15, including the AVC fund, had been made.

21. Mr P was unhappy about the time taken for completion of the transfer and raised a complaint under the Scheme's internal dispute resolution procedure (**IDRP**). His complaint in summary was that:-

    - It was unfair that he had to opt-out of the Scheme in order to obtain a CETV quotation. His family will be financially disadvantaged if he dies whilst still in service, as the death benefits will reduce.

    - He had to wait for the completion of two payroll runs before a CETV quotation could be produced.

    - Communication between the Employer and Mercer was inadequate. The Employer received his opt-out form on 22 July 2016, yet he received a letter dated 6 September 2016 from Mercer saying that he had to opt-out of the Scheme, before the transfer would be allowed.

    - He made a transfer request to Mercer on 8 July 2016, but did not receive the CETV quotation until 5 October 2016. He considered the delay to be unreasonable.

    - He was advised by Mercer, on 10 November 2016, that it had received all the required transfer documentation and that a request would be issued to Aviva for his AVC funds to be disinvested, which could take 10 working days. However, by 25 November 2016, the transfer had not been completed.

- Mercer was not prepared to process a transfer from the Scheme until it received the AVC funds from Aviva, despite him offering to pay the bank charges for two separate transfer payments.

- He had incurred a financial loss of £1,500 during the period between receiving the CETV quotation in October 2016, and the transfer being completed, following Aviva's failure to disinvest the AVC fund promptly.

- The transfer was eventually completed on 16 January 2017, almost seven months after his original request for a CETV quotation and he considered this to be an unreasonable length of time.

- He was forced to take out a loan, due to not being able to access his retirement benefits when planned. This caused distress and inconvenience on top of health issues.

22. In summary, the Trustee replied that:-

- Active members seeking a transfer are required to opt-out of the Scheme and their benefits need to be calculated based on their final pensionable salary at their date of leaving.

- Pensionable salary is defined as base salary plus some variable elements such as shift pay that are pensionable but may not reflect fully on the payroll for two months. So, the Trustee waits for this period after a member has left before determining their final pensionable salary.

- A guaranteed CETV quotation may only be calculated and provided to a member at that stage and the whole process typically takes approximately three months.

- Aviva produced a loss assessment which indicated that Mr P did not incur a financial loss during the delay in disinvesting his AVC benefits.

- Mercer attempted to challenge this, but Aviva would only comment that the loss assessment was completed in line with its standard procedures.

- Aviva offered £100 to Mr P in recognition of the distress and inconvenience caused by the delay in disinvesting the AVC funds. Mercer also offered £50 worth of retail vouchers to Mr P for not being more proactive in chasing Aviva.

- The Trustee said that the transfer took some time to complete, but it considered that most of the delays were normal and necessary. However, the delay in Aviva disinvesting the AVC fund was unreasonable.

- The Trustee acknowledged that the delay in completing the transfer led to Mr P taking out a loan, which incurred charges of £85.50. The Trustee agreed to refund this amount and offered £200 in addition to the £100 awarded by Aviva and the £50 of retail vouchers offered by Mercer.

23. Mr P remained unhappy and complained under stage two of the IDRP.

24. In response the Trustee stated that:-

- The delay of two salary payment months in issuing a CETV quotation to a member is standard practice for the Scheme.

- Mercer received Mr P's completed transfer forms on 27 October 2016. It expected to receive the AVC fund from Aviva by 25 November 2016 and that the transfer would be completed by the middle of December 2016. However, there was a delay in Mercer receiving the AVC funds and the transfer was not completed until 16 January 2017.

- The transfer was processed within the statutory timescale limit, but not in accordance with the level of customer service Mr P would have hoped for.

- The offer by the Trustee of £85 in recognition of the bank charges Mr P had incurred during the transfer process was found to be appropriate. But the Trustee considered the offers made by Mercer and Aviva were insufficient. The Trustee offered a further payment of £350.

25. **The Employer's position:-**

- Confirmation of Mr P's decision to opt-out was received in July 2016, and his contributions to the Scheme ceased on 1 August 2016, but this information was not communicated to Mercer until 21 September 2016.

- As the normal two-month waiting period had elapsed since Mr P opted-out, Mercer confirmed to Mr P on 28 September 2016 that his CETV quotation would be issued shortly, and it was sent on 5 October 2016.

- There were delays and breakdowns in processes up to that point, but they did not delay the production of Mr P's CETV quotation.

- Given Mr P's circumstances the two-month waiting period for production of his CETV quotation was unnecessary.

**The Trustee's position**

26. The Trustee maintained the points made at Stage 2 of the IDRP and in addition said:

- The standard procedure of waiting for two payroll months to pass after a member has opted-out, before completing their CETV quotation, was unnecessary in Mr P's case.

- A two-month wait is left to capture any retrospective adjustments or back-payments that are due to a member after they have left active membership. But Mr P was on long term sick leave during June and July 2016, so that would not have applied to him.

- Aviva said that any issue with the loss assessment it carried out must fall under the jurisdiction of the Financial Ombudsman Service and be taken up by Mr P.

- Mr P has insisted that he incurred a financial loss of approximately £1,500 resulting from Aviva disinvesting his AVC funds late. But the Trustee may not reasonably be held responsible for Aviva's actions.

- Mr P requested a transfer of all his benefits, so it was reasonable to complete the transaction as a single payment. At no point, before the AVC funds were received from Aviva on 23 December 2016, did Mr P request a partial transfer.

- The Trustee has offered Mr P £350 plus the refund of £85 relating to the loan charges Mr P incurred whilst the transfer was delayed. Aviva has paid him £100 in recognition of the delays.

27. **Mercer's position**

- Mr P was informed that Mercer would not be able to complete the transfer until the AVC fund was received from Aviva, which Mercer expected to take up to 10 working days from being requested.

- Mr P is aware that Mercer did not receive his AVC fund from Aviva until 23 December 2016.

- The transfer was completed on 16 January 2017, a total of 13 working days from receipt of Mr P's AVC fund. Mercer does not consider that to be an unreasonable delay.

- An award to Mr P of gift tokens worth £100, in recognition of Mercer's failure to update him as to the progress in completing the transfer, was appropriate.

## Adjudicator's Opinion

28. Mr P's complaint was considered by one of our Adjudicators who concluded that no further action was required the Trustee, the Employer or Mercer. The Adjudicator's findings are summarised below:-

- Opting-out would have been a requirement for any active member in similar circumstances, according to Scheme Rule 17 (2) (b). It meant that in order to provide a guaranteed CETV quotation, the Trustee needed to establish the member's final pensionable salary. But to do that Mr P had to opt-out of the

Scheme and create a date at which the final pensionable salary could be calculated.

- Mr P was required to obtain financial advice, before the transfer could proceed. It was for Mr P and the Adviser to consider any reduction in death benefits and the repercussions of not being permitted to re-join the Scheme, before making a decision to opt-out.

- Mercer's normal timescale is to issue CETV quotations within three months of a member opting-out. In this case, the Employer confirmed receipt of Mr P's completed opt-out form on 25 July 2016. He received a CETV quotation on 5 October 2016, which is within Mercer's normal timescale.

- It is Mercer's standard practice to wait for two monthly payrolls to elapse before producing a CETV quotation, after a member's pensionable service ends. That turned out to be unnecessary in this case, but Mercer's normal processes were followed, and Mr P was informed beforehand.

- There was a delay in the Employer advising Mercer that Mr P had opted-out of the Scheme. That delay amounts to maladministration. But given that the delay, from 1 August 2016 to 15 September 2016, fell entirely within the two-month waiting period, it would not have had an impact on the timeframe for sending the CETV quotation to Mr P.

- There is no evidence to support the view that Mercer received a partial transfer request from Mr P before it received the AVC funds from Aviva.

- The Trustee and Mercer cannot reasonably be held responsible for delays outside their control which resulted in the transfer not being completed until 16 January 2017.

- Mr P has not provided any evidence in support of his claim that he incurred a financial loss that is attributable to any delay in completing the transfer.

29. Mr P did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr P maintained his previous position. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr P for completeness.

## Ombudsman's decision

30. Mr P says that he should not have been required by the Trustee to opt-out of the Scheme, in order to request a transfer. Rule 17 (2) (b) of the Rules that govern the Scheme provide that it was a requirement for Mr P to opt-out of the Scheme, before a CETV quotation could be produced. I am satisfied that the Trustee has interpreted the relevant Scheme Rule correctly by requiring Mr P to opt-out of the Scheme in July 2016, when he requested a CETV quotation.

31. Mr P says that there were unreasonable delays in completing the transfer. While I recognise that, in Mr P’s case, it was unnecessary for Mercer to have followed its normal procedure of allowing two monthly payrolls  to pass before issuing a CETV quotation, and I note that there was a delay in the Employer advising Mercer that Mr P had opted-out of the Scheme, it remains that the CETV quotation was issued to Mr P well within Mercer’s normal three-month timescale. I do not find that unreasonable in the circumstances.

32. Mercer received the completed documentation to process the transfer on 10 November 2016. Mr P was then informed the transfer could not be processed until his AVC funds had been received from Aviva. The AVC funds were received from Aviva on 23 December 2016, and the transfer completed on 16 January 2017. Mercer cannot be held responsible for the delay between 10 November 2016 and 23 December 2016, as matters were outside of its control. However, even taking account of the festive period, in the normal course of events, it might have been possible for the transfer to have completed sooner than 16 January 2017.

33. However, even were I to consider that this short delay amounts to maladministration there is no evidence of Mr P having suffered a financial loss as a result of the delay. Also, Mr P has adequate recompense in respect of the maladministration

34. I do not uphold Mr P’s complaint.

**Anthony Arter**

Pensions Ombudsman
18 May 2020