The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr R
Scheme	BAE Systems Executive Pension Scheme (**the Executive Scheme**)
Respondents	BAE Systems Executive Pension Scheme Trustees Limited (**the Trustee**) Equiniti

Complaint Summary

Mr R is unhappy that Equiniti understated the tax due for a transfer to a qualifying recognised overseas pension scheme (**QROPS**). Further, he is unhappy with Equiniti's timing in notifying him of the error, which he says left him in a position where he was unable to make an informed decision about whether to transfer all of his accrued funds directly to a QROPS or to a self-invested personal pension (**SIPP**) instead.

Mr R contends that had he been given correct information at the outset, he would have transferred the funds to a SIPP initially and eventually transferred the entirety of these to a QROPS in a way that would have avoided the payment of tax.

Summary of the Ombudsman's Determination and reasons

The complaint is not upheld against the Trustee or Equiniti because I do not consider that Mr R has suffered a financial loss. Mr R has been offered an award of £3,500 so it remains open to him to accept or reject that offer.

Detailed Determination

Material facts

1. Mr R was a member of the BAE Systems Pension Scheme and also the BAE Systems Executive Pension Scheme (collectively referred to as **the Schemes**) and resided in the UK until 2004. He subsequently moved to Australia and, in 2015, began considering his options with regard to transferring his funds out of the Schemes and moving these closer to where he was based. One option being explored was the transfer of funds to a QROPS; which is a scheme capable of accepting a transfer value from a UK-registered pension scheme.

2. On 25 November 2015, Equiniti, the Schemes' administrator, sent a wealth adviser (**the adviser**) representing Mr R a Benefit Information Pack.

3. On 21 January 2016, Equiniti emailed the adviser saying:

   "I refer to your previous email correspondence…providing a CETV quotation and relevant paperwork in respect of [Mr R].

   We have recently been advised by the Actuaries of the Scheme that certain actuarial assumptions used in the calculation of the transfer value provided were incorrect and as a result, the transfer value quoted…was overstated.

   In this respect we have attached a letter of explanation, together with a revised Benefit Summary, Benefit Form and Transfer Acceptance Form."

4. In June 2016, Mr R's independent financial adviser (**the IFA**) approached Equiniti saying that Mr R had engaged her advisory firm to provide an FCA Compliant Pension Transfer Analysis Report. She attached a letter of authority.

5. Throughout the rest of 2016, the IFA made enquiries about Mr R's benefits in the Schemes. She advised Mr R that the main options available to achieve his objectives were:-

   1) Move the money to a UK SIPP then progressively move money into an Australian fund.

   2) Transfer money via QROPS to a New Zealand scheme which due to reciprocal arrangements between New Zealand and Australia, would allow him to move his funds to Australia.

6. In a letter dated 1 December 2016, HMRC wrote to Lifetime Asset Management Ltd, a company based in Wellington, New Zealand, in reference to the Garrison Bridge Superannuation Scheme (**the Garrison Scheme**). It acknowledged Lifetime Asset Management Ltd's declaration that this scheme met the requirements to be a Recognised Overseas Pension Scheme and allocated it a reference number.

7. On 13 December 2016, the IFA emailed Equiniti and said:

> "I am presently in Australia and have been liaising with [Mr R's] Australian adviser… on this basis we would like to request another Guaranteed Equivalent Transfer Value quote."

8. On 13 January 2017, Equiniti sent the IFA a Benefit Information Pack with updated quotations for taking benefits from the Schemes at certain dates.

9. On 30 January 2017, Equiniti sent the IFA a Benefit Information Pack setting out the transfer value available should Mr R decide to transfer benefits out of the Schemes. This stated a transfer value of £1,521,341.66, with £38,047 of this amount being in excess of the Lifetime Allowance (**LTA**) and subject to tax. The letter explained that the figures provided would be guaranteed until 18 April 2017.

10. On 3 February 2017, the IFA sent the following email to Equiniti:

> "Further to our telecon, I just wanted to clarify the Lifetime Allowance issues in reference to the total transfer value. I have set out my presumptions based on my take of the Benefit Summary for [Mr R] (10611031) as follows:
>
> If we transfer to a UK registered SIPP the transfer value to the SIPP would be: £1,521,341.66 (TV w/in LTA) + £38,047.00 (TV in excess to the LTA, but no LTA charge applied on transfer, but [sic] LTA calculation certificate accompanies the transfer to the SIPP) = £1,559,388.66
>
> If we transfer to an overseas QROPS registered fund the transfer value paid out to the QROPS would be £1,521,341.66 (TV w/in LTA) + £28,535.25 (£38,047 (TV in excess to the LTA) - £9,511.75 (25% tax charge on excess to LTA)) = £1,549,876.80
>
> If you could kindly confirm if my calculations/presumptions are correct, or not, that would be greatly appreciated."

11. On 17 February 2017, Equiniti replied saying:

> "A UK transfer is not classed as a benefit crystallisation and as such the LTA does not need to be measured at this time, however the Scheme Rules dictate that Members benefits are to be restricted to the LTA. The member would have to choose to waive this restriction in writing to facilitate the transfer of benefits in excess of the LTA. We would also need to check that no Annual Allowance (AA) charge has arisen as a result of waiving the restriction.
>
> An overseas transfer is a benefit crystallisation so the LTA excess would need to be addressed. As above the member would need to waive the restriction to transfer. A check would be required to ensure that no AA charge has arisen. The LTA excess would be subject to an excess tax charge, which I understand is only 25%."

12. On 7 March 2017, the IFA referred to the above emails and asked Equiniti the following:

"You verbally confirmed yesterday that my understanding of the CETV splits was correct, and therefore I assume my calculations are also correct, however your assurance in writing by reply email would be greatly appreciated."

13. On the same day, Equiniti responded saying:

"Further to our recent telephone conversation and your subsequent email, I can confirm that your calculations/presumptions are correct. However, the Scheme Rules dictate that Members benefits are to be restricted to the LTA, [Mr R] would therefore have to choose to waive this restriction in writing to facilitate the transfer of benefits in excess of the LTA."

14. On 2 April 2017, Mr R emailed Equiniti in regard to waiving this restriction.

15. On 10 April 2017, Equiniti confirmed to the IFA that it had all the paperwork required and would aim to process the transfer by 13 April 2017.

16. On 13 April 2017, Equiniti sent an email to the IFA which said:

"Further to our telephone conversation a few moments ago, I confirm that the actuary has advised that the taxable element of [Mr R's] CETV is higher than previously indicated.

Originally, it was advised that the taxable element was in the region of £38k, but this has now increased to £308,542. Therefore, the tax due will be £77,135.53 leaving the CETV to be transferred as £1,481,406.59.

We will require [Mr R's] confirmation that he still wants the transfer to proceed on this basis.

As advised, to get the transfer completed today we have a deadline of 2pm to get the paperwork to the Finance team and to have three levels of authorisation. Therefore, I suspect that payment will not now happen until Tuesday. I confirm that we will need to check the QROPS list again on Tuesday but as long as the receiving scheme is listed, there should be no further delay."

17. On 18 April 2017, Mr R and the IFA had a conference call with Equiniti about the error. The agreed telephone note from this call says:-

- Mr R said that Equiniti's email of 13 April 2017 offered no explanation as to why the valuation had changed nor was it mentioned that an error had been made. The IFA had forwarded Equiniti's email to him at 10:50pm Australian time, and Equiniti had said it needed a decision within an hour to enable the transfer to take place that day. No guidance was offered by Equiniti on the consequences if it did not hear back in time.

- Mr R did not read the email until the following morning and immediately tried to contact Equiniti, leaving a voice message. That weekend, he and his IFA attempted to understand what had happened. This was highly stressful as he

believed he might miss the guarantee date and need to apply for a new quote, meaning that he would get "caught out" by the new UK rules, making transfer [sic] to NZ, his only option, non-viable.

- Mr R said Equiniti had told him at the time of the first calculation that it lacked experience of calculating the taxable elements for CETVs which were above the LTA. Further, this was not the first CETV calculation error which Equiniti had made over the last 18 months.

- Mr R was dissatisfied that Equiniti did not directly inform him of the error and was not available to answer his queries. Equiniti had no solid information on the situation and, had he not pushed to speak with Equiniti, nothing proactive would have been done to address the errors made. Further, the 13 April 2017 email contained no details in order to allow him to make a judgment of the validity of the situation.

- Mr R wished to receive copies of the incorrect and correct tax calculation and information on the complaints process.

18. On 20 April 2017, Mr R emailed Equiniti saying that the confusion caused by the error and its subsequent handling was delaying his decision on whether to proceed. He said the transfer was complex and there had been a change in the UK March budget which would disallow the method he intended to use but fortunately, he had triggered the transfer prior to this change. He highlighted that he urgently required the correct CETV and requested that this be accelerated ahead of any investigation of the matter, as he was subject to a restricted timescale.

19. On 21 April 2017, Equiniti sent an email to Mr R in which it confirmed that the transfer value available for payment was £1,482,928.29 following a tax deduction of £77,642.76, which had been verified by the Scheme Actuary. It said that the updated recognised overseas pensions schemes list had been reviewed, Mr R's chosen provider was on this list and the team had all the information they needed to process the transfer. Lastly, Equiniti said that although a 10 to 15 day timescale had been previously advised, given the seriousness of the issue, the transfer would be given the highest priority, which it would aim to complete within a week of Mr R's authorisation.

20. The same day, Mr R replied saying:

> "I am now even more confused. You have presented me with yet another figure for the taxable valuation.
>
> All previous numbers had also been verified by the schemes Actuary. Why am I to believe this number?
>
> I will now consider this situation over the weekend and advise what action I wish taken."

21. On 26 April 2017, Equiniti emailed Mr R saying that the transfer value payable, after the deduction of tax for an amount of £77,642.76, was £1,482,928.29, noting that it had not received Mr R's decision around proceeding with the transfer.

22. On the same day, Mr R replied saying:

> "I would like to confirm my decision to transfer the funds from the BAE Systems pension fund into the Garrison Bridge fund under the QROPS arrangement. I would be grateful if you could take the necessary steps to make this happen as soon as we can."

23. Later that day, Equiniti emailed Mr R to confirm that it had made a payment of £1,482,928.29 to the Garrison Scheme.

24. On 5 May 2017, Equiniti provided its response to Mr R's complaint. It explained that the error had occurred when calculating the tax charge for funds in excess of the LTA as it had not been factored in that this was an overseas transfer, which is a benefit crystallisation event. It said at that point such a transfer had not been confirmed to Equiniti. It noted that Mr R had requested compensation of around £68,000, which represented the difference between £1,549,876.80 and the final transfer payment, but said it was not able to agree to this. It did however agree that there were errors in the information it provided and offered to pay Mr R an ex-gratia payment of £2,200, whereby £1,000 of this sum was in recognition of the distress and inconvenience he had suffered, and £1,200 represented a refund of the fee Mr R had paid for a revised CETV.

25. In Mr R's reply, he questioned how Equiniti could have had any misunderstanding about the funds being moved overseas.

26. On 14 May 2017, Equiniti wrote to Mr R. The main points were:-

    - It was aware that that an overseas transfer was being considered and incorrectly provided figures that would have applied to a transfer within the UK. In summary, it had revalued the LTA to retirement age for tax purposes for a UK transfer, but such a revaluation was not allowed for an overseas transfer.
    - The error was compounded in further correspondence with the IFA when she asked it to confirm certain calculations she had completed.
    - In terms of the compensation Mr R was seeking, although it had raised Mr R's expectations, the correction of tax on a payment did not in itself constitute a direct financial loss and the transfer payment was correct. Mr R had mentioned additional costs he had incurred in pursuing his complaint, it would consider reimbursing this should he provide appropriate analysis and evidence of this.

27. On 19 May 2017, Mr R replied saying he did not feel Equiniti's letter addressed his points and missed the most critical one:

"Your letter does not reflect the critical point I have made to you on several occasions that due to legislation changes I was unable to reconsider my options because you advised me of your error too late in the process. My financial goal has always been to bring my pension to my current country of residence, the only efficient way to do this was via New Zealand. This ability closed on 9 March which is when I confirmed my intention with BAE Systems. Notification of your error came too late for me to reconsider."

28. Mr R subsequently submitted his complaint through the Schemes' Internal Dispute Resolution Procedure (**IDRP**).

29. On 2 August 2017, the Trustee responded with its stage one decision. It concluded that, bearing in mind Mr R's "ultimate goal" had been to transfer his funds to Australia, it felt Mr R would have nonetheless made the same transfer had he known the correct amount of tax payable at the outset. Further, had Mr R delayed the transfer, it would have been affected by a post-budget change where tax would be paid on the entire CETV. However, it wished to increase Mr R's compensation to £3,500 in recognition of the distress and inconvenience he had suffered and the expenses incurred.

30. On 26 September 2017, Mr R notified the Trustee that he wished to appeal its decision. He highlighted the point that had he known the option to transfer to a UK SIPP remained, he would not have gone ahead with the QROPS transfer, as this required the immediate payment of full tax. Instead he would have transferred to the SIPP and reassessed his options. He said Equiniti had advised in a phone call that his options were to stay in the Schemes or carry on with the QROPS transfer. Had he decided to do the former, he would need to "write-off" the £37,000 paid in advice fees and in setting up the Garrison Scheme, as well as alter his employment and retirement plans where he would not receive an income until age 62.

31. On 29 November 2017, the Trustee replied under stage two of the IDRP. Its response is summarised below:-

   - Although Mr R was misinformed initially, he was fully aware of the tax due when he decided to proceed with the transfer, which was the correct amount. Hence, there was no financial loss. At most, it could be said that he had paid the tax that was due earlier than if he had transferred his funds to a SIPP, as tax would have still been payable for benefits in excess of the LTA.

   - Mr R did not need to make an immediate decision as he had suggested. It notified the IFA of the error on 14 April 2017 and Mr R decided to proceed on 26 April 2017. Therefore, he had several days to consider the matter.

   - Mr R had said an Equiniti adviser had wrongly told him of the purported two options left available. The named adviser had since left and there was nothing in the form of emails or telephone records to corroborate that Mr R was told this.

- The Trustee's view was that Mr R would have proceeded with the transfer had he known the correct tax due; therefore, the offer made at stage one was reasonable.

32. Mr R subsequently referred the matter to The Pensions Ombudsman (**TPO**). In a letter, which he sent to the Trustee around the same time about intending to refer the matter to us, he added that his objective could have equally been achieved via a UK SIPP. Further, his financial advice showed that due to the indexing of the LTA level, it was unlikely he would have ever gone over the limit.

33. The Trustee set out its position in its formal response to this Office:-

    - Whilst the guarantee period expired on 18 April 2017, Mr R's pension savings were not transferred until 26 April 2017. This was because, provided that all the transfer paperwork had been signed within the guarantee period, statute provided that the transfer value could be paid within six months of the expiry of the guarantee period.
    - Mr R had not been precluded from a transfer to a UK SIPP as a consequence of Equiniti's miscalculation, as once the error was made known, he met with his IFA's and discussed this possibility.
    - Mr R had not provided any evidence to verify that it would have been legally possible to transfer his funds to a UK SIPP and gradually transfer these to Australia to avoid the LTA charge, nor had he set out his calculations on this. It may be clear with hindsight that a direct transfer to an Australian fund from a SIPP would be possible, but at the relevant time it was not.
    - Further, his financial modelling did not make reference to potential exposures to currency fluctuations which could diminish the real-terms value of funds in a UK SIPP destined for Australia, ancillary costs such as SIPP charges, or any QROPS which funds might be transferred to on a "drip-feed" basis.
    - In asserting that the indexing of the LTA would allow him to gradually offset his LTA charge, Mr R was making the assumption that the UK Government would continue to increase the LTA. Considering the value of Mr R's pension savings at the date of transfer, the LTA would have needed to increase significantly for this to happen.

34. In subsequent correspondence Mr R made the following points:-

    - Whilst he could have cancelled the transfer, it was clearly stated by Equiniti that, if he did, he would need to commence the whole CETV process again, and the new value could be less.
    - Further, a new CETV would take up to eight weeks to provide which would be after the Australian May budget and returning to the QROPS option would require a further 25% tax to be paid to HMRC.

- It was unreasonable for the Trustee to suggest that he or his financial advisers should have known the process which would follow once the error was realised, when it seemed Equiniti itself did not know this.
- The proposed award did not cover his immediate financial loss or even his costs in trying to resolve the situation following the error.

Summary of Mr R's position

35. He was notified of the calculation error by Equiniti on the Thursday before the Easter bank holiday weekend, which left him very little time to consider alternative options, with the guarantee date being imminent.

36. On the Tuesday following this, Equiniti initially refused his call and, when he finally got through to a team leader, he was told his options were to proceed with the QROPS transfer or stay in the Schemes. It was clear that if he wished to do anything else, he would need to obtain a new CETV. There was no offer from Equiniti which would have allowed him the option of switching his exit plan to a UK SIPP without needing to request another CETV.

37. His advisers had asked him to find out if a switch to a UK SIPP was possible as they had come up with a way of using it to minimise his tax exposure and depending on the consumer price index (**CPI**) on the LTA, negate tax exposure completely over time. Equiniti had said a transfer to a UK SIPP was possible but not without a new CETV. He was not prepared to wait until after the Australian budget and risk any more barriers. He told his advisers to forget this option as a new CETV would take the usual eight weeks to produce.

38. During the IDRP, the Trustee had said, provided that all the transfer paperwork had been signed within the guarantee period, the transfer value could be paid within six months of the expiry of the guarantee period. However, this was not made known to him at the time.

39. It had been suggested that he ought to prove his financial loss by demonstrating that, had he known the correct position at the outset, he would have gone ahead with the SIPP option, and this would have been more favourable in tax terms. This however, was difficult to prove now as the SIPP option was initially discounted on the basis of the £9,000 tax due for the QROPS transfer, so no analysis was carried out on it. Following the error, whilst he and his advisers had broadly considered what might have been possible under the SIPP route, he did not pay his advisers to carry out any further detailed calculations as a new CETV was required to pursue this. The Trustee or Equiniti should instead be required to prove that he would not have proceeded with the QROPS transfer had he been given the correct information.

40. Based on the lifestyle assumptions given at the time, he could have firstly moved his funds into a UK SIPP. This would not have crystallised any UK tax at that time. He could then have moved £1.25m (the LTA) offshore to New Zealand and drawn an income in Australia upon retirement. The remaining £300,000 would stay invested in

the UK SIPP. Assuming the LTA would increase by UK CPI each year at a rate of 3%, this would give an increase in the LTA of £37,500 per year. If he "moved the annual increase each year" to stay below the escalated LTA, then it would take eight years to transfer the remaining CETV to New Zealand without crystallising any UK tax. He did not need additional money to meet his income target during that eight-year period.

41. The error made by Equiniti and the procedural advice that followed meant that he was unable to follow this plan, and that resulted in a financial loss equal to the tax he had to pay immediately.

42. He had no intention of avoiding paying tax. His intention was to maximise the net value of his pension fund within the tax rules of the UK and Australia.

43. Clearly with hindsight, it was possible to challenge the assumptions made at the time. For example, these did not factor in any impact on foreign exchange from the UK's exit from the European Union, the slowing of the world economy, the Australian Banking Royal Commission. However, he would have been happy to proceed with this plan had it been an option at the time.

44. He had established that there was a route, via a UK SIPP, which did not crystallise the UK tax immediately upon exit and there were multiple future options open to him from that point to meet his financial requirements. The SIPP route was not open to him as he had not provided the required paperwork before the end of the CETV period, as per the Trustee's exit procedure. The Trustee's opinion was that the SIPP option would have been unfavourable. However, his analysis, based upon his assumptions and knowledge of his position, was favourable, as it did not immediately crystallise the tax. The Trustee was failing to understand that, while his financial intention, as they kept saying, was to move the money to Australia, there was no urgent requirement.

45. The Trustee had confirmed that there were no special procedures for the Equiniti call centre staff to follow in the event of an error being made. However, the statements made in the Trustee's recent response seemed to be in complete contradiction to this. It was hard to understand why it had stated the "steps Equiniti would have followed" when these were in contradiction to the Trustee exit process.

46. It was also important to note that, at that stage, Equiniti was denying it had made an error. The Trustee's solicitors were making such comments in hindsight and with the benefit of two years passing. For the Trustee to grant such permission, it would need to be asked, but Equiniti was at the time denying it had made an error so why would it have asked. Its position, at that time, was that he was paying the correct tax for a QROPS exit; it was only later that Equiniti admitted it had made a calculation error against his instruction. For this point in the Trustee's response to have any credibility, it would need to provide evidence that, in 2017, it would have granted approval for members to provide exit instructions after the guarantee date.

47. On this point, it was important to point out that that it took two rounds of what Equiniti had termed “in-depth” analysis of what had transpired, for it to admit that an error was made. In its letter of 5 May 2017, it had attempted to place the blame on him, saying confusing instructions had been given. It was only after he provided Equiniti with copies of emails it had sent to him, that clearly showed there was no confusion, that Equiniti admitted to having made an error. He was concerned that Equiniti’s “in-depth” complaint analysis did not uncover these emails.

48. He had provided evidence that a UK SIPP was one of his options to exit the Schemes. Equiniti confirmed in writing that there was little net difference in CETV for these two options, which proved to be wrong. His decision to exit this guaranteed benefit scheme and the option through which to do this, had taken several years of analysis. Had he known about the significant difference in net value between the two exit options, he would have chosen the UK SIPP option, as his IFA had offered both.

49. He was told by Equiniti that under the existing CETV he could not alter his instruction as the Trustee’s process required written instructions prior to the end of the guarantee date. The Trustee had confirmed this to be its procedure and that there were no alternative procedures for different circumstances. At no time did Equiniti offer any advice on its procedures in the event of it making an error.

50. He could see no factual evidence that went against the advice he was given by Equiniti, this being that if he wished to alter his instruction, he would need to apply for a new CETV. The Trustee’s solicitors’ response that “they consider it unlikely that the Trustee would have withheld such permission” was pure conjecture and lacked the evidence to support it. Such permission would have been against the Schemes’ rules and as pointed out, Equiniti was at that time denying it had made an error.

51. It seemed there remained the question of whether any such advice was given by Equiniti, as nothing was put in writing by the Equiniti case manager. However, the person that gave him this information left the employment of Equiniti within days with no record of the discussions in question.

52. Equiniti and the Trustee had frustrated the complaint by constantly delaying the process. This delay made it increasingly hard to prove above all doubt that a financial loss had occurred, and key people were no longer available to confirm or deny what happened. The Trustee’s solicitors were making bold conclusions based on hindsight. They were assuming that those involved at the time were experienced enough to question agreed procedures in order to assist a customer, when they were actually focused on denying any liability for an error.

53. His position remained that due to a failure in service from the Trustee, he was forced into accepting a financial loss. The alternative was not to exit, which would have resulted in greater financial loss.

54. The Trustee appeared to only be disputing the amount of tax as opposed to saying there was no loss. He had always stated that it might have taken him 15 years to transfer the additional £310,000.00 to remain under the CPI inflated LTA, but this

would be dependent on CPI, for which he could only make an assumption based on historical UK data.

55. Although others might have different assumptions or views which could alter the strategy he had put forward, the fact remained that had Equiniti provided him with the correct valuations and Trustee procedures, enabling him to move the CETV into a UK SIPP, he would not have crystallised the immediate tax payment on the QROPS transfer. This was the fundamental issue of the case.

Summary of the Trustee's position

56. The transfer of his pension savings to the Garrison Scheme had attractions for Mr R, which, as he noted in his complaint dated 26 May 2017, had been carefully researched by his IFA. This decision was made taking into account all the various options, including the alternative use of a UK SIPP.

57. A further point to consider was the impact of UK tax changes affecting a QROPS. Following the UK budget on 8 March 2017, a legislative change was made from 9 March 2017, to the effect that transfers to a QROPS not in the member's country of residence would attract a 25% tax charge on the entire CETV.

58. Mr R requested his CETV on 18 January 2017, before the UK budget, and accordingly he was able to proceed with the transfer to the Garrison Scheme without triggering the new tax charge. This was the route chosen by Mr R, who was aware of the significance of these UK tax changes.

59. There was no evidence to suggest that Mr R would have made a different decision on the transfer if the correct tax calculation had been available to him from the outset. Once the new change was announced in March 2017, the most tax efficient route for Mr R was to proceed with the original plan of a transfer to a QROPS, which is what he chose to do.

60. As the Trustee did not accept that Mr R would have decided to proceed with a transfer to a UK SIPP if the error had not occurred, it was arguable that it did not need to consider the question of whether Mr R had suffered a financial loss. However, it would lay this argument to one side to allow for an examination of Mr R's contention that a transfer to a UK SIPP would have been to his financial advantage.

61. Mr R had said that by transferring his funds to a UK SIPP he could have avoided paying the LTA tax charge by carrying out the following steps: 1) transferring his pension savings (£1,560.572.05) tax free to a UK SIPP; 2) transferring £1,250,000 out of the UK SIPP to the Garrison Scheme without a LTA charge where this sum was available to him under Individual Protection 2016 (**IP2016**); and 3) gradually transferring the remaining £310,572.05 out of his UK SIPP to the QROPS as and when the LTA which applied to him increased each year with inflation.

62. Mr R's analysis assumed that the LTA would increase by 3% each year, which he equated to an annual increase of £37,500. On that basis, he said it would take just

eight years to transfer the remaining £310,572.05 to the QROPS without exceeding the LTA; thereby transferring the full amount tax free. This was not correct.

63. The transfer of £1,250,000 to the QROPS would have utilised 100% of Mr R's available LTA. Under the legislation, once an event had utilised 100% of an individual's LTA, any subsequent increase in the LTA would be of no benefit to them. This was the case even if the standard LTA increased above the level of the LTA which applied to such an individual when they crystallised benefits at the 100% level. Having transferred £1,250,000 as per step 2 above, if Mr R had gone on to make future payments out of the SIPP to the QROPS at step 3, he would at that point be triggering further taxable elements with no LTA available to offset against them. Accordingly, all such payments would be exposed to a LTA excess tax charge.

64. Mr R had suggested that a tax benefit could be gained by the gradual transfer of funds out of the SIPP with the LTA increasing for inflation. However, this point did not take into account the fact that, from the start of the 2016/17 tax year, the LTA was reduced to £1,000,000.

65. It was correct that, since 6 April 2018, the LTA had been indexed rising gradually in line with the increases in CPI, but it was the standard LTA that had done so, not the IP2016 LTA of £1,250,000 that applied to Mr R. Adopting his assumption that the annual CPI increase would be 3%, it would take eight years before the current standard LTA exceeded the IP2016 level, and 17 years before it exceeded his total pension savings. By then Mr R would be around 75 years old (or older if CPI inflation was less than 3% on average).

66. By using a UK SIPP, Mr R would be without the personal use of the money for many more years than he had suggested. He would also incur various significant risks with respect to his SIPP. These included investment risks, SIPP running costs and the material risk of major changes to the UK tax regime in application to both UK SIPPs generally and to an overseas jurisdiction of tax relieved pension savings.

67. Further, the new 25% tax charge, which applied from 9 March 2017, on a transfer to the QROPS out of a UK SIPP, meant that any payment out of the SIPP in line with step 3 would have been taxed at that level. This all contrasted with the current situation where, following his transfer to the Garrison Scheme, Mr R had the money in a pensions vehicle of his choice and had been able to access it to provide income in retirement as he chose. Furthermore, the route Mr R chose was tax beneficial for him as it avoided the new 25% tax charge on any element of the transfer.

68. Mr R had suggested that there was no offer from Equiniti to allow him the option of switching his exit plan to a UK SIPP without needing to request another CETV. On this point, Mr R's account of Equiniti's position had changed. He initially said Equiniti had told him his only two options were to either leave his savings in the Schemes or continue with the transfer to the QROPS. More recently he had said Equiniti said he could transfer his pension savings to a UK SIPP but not without a new CETV.

69. Had Mr R confirmed at any time after the expiry of the guarantee period that he wanted to change his original instructions, he could have done so by providing revised paperwork requiring the transfer on the existing CETV to be made to the UK SIPP instead. Equiniti would have asked the Trustee for permission to accept the change in instructions, despite the fact that this would be outside the guarantee period. Given Mr R's position, there was no reason to conclude that the Trustee would have withheld such permission.

70. It did not agree that granting permission for the transfer to be made to the SIPP, on receipt of revised paperwork from Mr R, would have been contrary to the Schemes' rules.

71. The Trustee's account had remained consistent, this being that, between 13 April 2017, when Mr R was informed of the error to 26 April 2017, when he asked Equiniti to proceed with the transfer, he did not ask for his pension savings to be transferred to a UK SIPP. Further, Mr R was able to raise further questions with Equiniti before the transfer, but there is no evidence he took up that opportunity.

72. As with all pension administrators, Equiniti was not in a position to advise Mr R personally rather, its role was to implement Mr R's instructions subject to any relevant pension law requirements. Further, Equiniti did not accept that it sought to place any "blame" on Mr R for the error; its processes were fair and transparent throughout and it had complied with its complaints policy in dealing with this matter.

73. The Trustee had set out in detail why, on a review of the technicalities of the relevant tax rules, it could be shown that Mr R had suffered no loss as a result of the error.

Summary of Equiniti's position

74. Equiniti has not provided any responses during the course of TPO's investigation. However, it is understood that the solicitors representing the Trustee have been liaising with it in respect to the information provided to TPO and that Equiniti is in regular contact with the Trustee regarding this matter.

Conclusions

75. I am satisfied that Mr R was considering the SIPP option as a serious alternative to the QROPS option. The IFA's email of 3 February 2017 to Equiniti, which concerned the LTA in respect to both of these transfer options, supports this. Further, this enquiry and those which followed highlight that the amount being transferred, along with any tax due, were central considerations.

76. It is not in dispute that Equiniti made an error in its calculation of the taxable element of the CETV, nor is it contested that this error was brought to light at a fairly late stage in the guarantee period. There is however a difference of opinion on the viable options available to Mr R at the point he was made aware of the error and whether the QROPS route has caused Mr R a financial loss.

77. The CETV sent to Mr R provided a transfer value guaranteed until 18 April 2017. On 10 April 2017, Equiniti confirmed it had all the paperwork required to process the transfer. On 13 April 2017, following notification of the error, Equiniti told the IFA that it required confirmation that Mr R wished to proceed with the transfer. Further communications followed, which mostly related to Mr R seeking additional confirmation of the amount that would be transferred, and on 26 April 2017, Mr R confirmed that he wished to go ahead with the transfer to the Garrison Scheme.

78. In its formal response, the Trustee said that, although the guarantee period expired on 18 April 2017, Mr R's pension savings were not transferred until 26 April 2017. It said this was because, provided that all the transfer paperwork had been signed within the guarantee period, statute provided that the transfer value could be paid within six months of the expiry of the guarantee period. I, however, cannot see that this point was communicated to Mr R or his IFA at this time.

79. The Trustee's solicitors have said Mr R could have changed his original instructions after the guarantee period by providing revised paperwork requiring the transfer on the CETV to be made to the SIPP instead. They consider it unlikely that the Trustee would have withheld the permission required to do this. This however appears to be a point made in hindsight and I cannot see that Mr R was made aware of such an option at the time.

80. Mr R believed he would require a new CETV to pursue the SIPP route, which would take a further eight weeks and he was concerned about changes in the upcoming Australian budget adversely affecting him. Further, Mr R and his IFA had spent months by this time planning for the QROPS option. Equiniti's error and its timing left Mr R in a difficult position. It is understandable why, all things considered, he felt it preferable to continue with the QROPS option. Although, the Trustee contends that Mr R would not have done anything differently, I consider it highly likely that Mr R would have pursued the SIPP option had correct information been given at the outset.

81. However, the main question is whether Mr R has suffered a financial loss as a result of pursuing the QROPS option, which he would not have done had he transferred his funds into a SIPP.

82. Mr R has argued that, with the SIPP route, he would have sought to minimise his tax exposure and, with the right strategy, he could potentially have negated or offset his tax exposure completely over time. The Trustee has argued that it is incorrect to say that Mr R would have paid no tax had he pursued the SIPP option, rather, he would have paid tax on a gradual basis rather than upfront because with the QROPS route, the transfer counts as a benefit crystallisation event.

83. Mr R has not been able to provide historical documents showing any form of analysis carried out on the SIPP option after the calculation error. However, he has consulted his current advisers to outline the strategy that most likely would have been deployed in relation to the SIPP route, taking into account the facts and circumstances known

at the time. I appreciate that it is difficult for Mr R to prove precisely what he would have done.

84. Mr R says he would have initially transferred £1,250,000 from his SIPP to his QROPS, transferring the remaining £310,572.05 over a number of years within the necessary limit to not exceed the LTA, avoiding the payment of tax. However, the subsequent transfers of funds which remained in his SIPP would have incurred their own tax charges upon transfer. Therefore, it is not possible to argue that Mr R would have avoided tax entirely in comparison to the QROPS route, with such a strategy.

85. Accordingly, whilst it is clear that Equiniti made a serious error, I do not find that Mr R has suffered a loss equating to the full value of the tax paid on the QROPS. He would have paid tax eventually with the SIPP option; albeit in a different way.

86. I turn now to the advice that Mr R was given by Equiniti after the error was communicated. The Trustee has not been able to find any record of the call in which Mr R says he was told his options were to proceed with the transfer or remain within the Schemes. In accepting the absence of such a record, Mr R has instead suggested that Equiniti's contradictory statements and lack of a set procedure applying to such errors indicates that its representative did misinform him of the options which remained open to him.

87. I do not agree that this, in itself, provides full support for Mr R's account. Crucially, even if it was shown that Equiniti provided incorrect advice, this would not grant Mr R the remedy for financial loss which he is seeking. This is because it cannot be argued that the SIPP option would have avoided tax entirely or offset it to a significant degree. Further, in terms of any misinformation given, Mr R had engaged several advisers, including an IFA, so he was not solely reliant on the information provided by Equiniti in his decision-making.

88. However, I agree, from the information available, that Equiniti did not provide Mr R with any clarity or direction following the error. This would have led to him feeling understandably distressed. That being said, I consider that the award put forward by the Trustee offers appropriate redress for this.

89. In conclusion, I do not consider that Mr R has suffered any identifiable financial loss. Instead, he has been subject to an exceptional level of distress and inconvenience, for which the Trustee has made an appropriate award. There is no remaining injustice for which I consider it necessary to make additional directions.

90. I therefore do not uphold Mr R's complaint.

91. If Mr R wishes to accept the Trustee’s offer of £3,500, he should contact the Trustee directly and make arrangements to do so.

Anthony Arter

Pensions Ombudsman
14 October 2019