

Ombudsman's Determination

Applicant	Miss S
Scheme	AXA UK Group Pension Scheme (the Scheme)
Respondents	AXA UK Pension Trustees Limited (the Trustee) Capita plc (Capita)

Outcome

1. I do not uphold Miss S' complaint and no further action is required by the Trustee or Capita.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss S has complained that as there was a dispute concerning the Cash Equivalent Transfer Value (**CETV**), she believes the Trustee should agree to honour the original figures even though the three-month guarantee period had expired.

Background information, including submissions from the parties

4. On 26 August 2016, a CETV was issued to Miss S with a value of £573,672.56. This was guaranteed for three months, so expiring on 25 November 2016.
5. Miss S requested further information on 11 September 2016, and asked whether the CETV was correct, because she believed the value was lower than she anticipated. Capita, the Scheme administrators, confirmed, in an email on 19 September 2016, that the CETV was correct and provided a copy of the general actuarial assumptions.
6. Miss S raised further queries on 19 September 2016, about the death benefits available under the Scheme. Capita provided a response on 21 September 2016, it provided a copy of the Scheme's Trust Deed and Rules, along with answers to Miss S' queries about death benefits. It also referred to the email of 19 September 2016, confirming that the CETV was correct.
7. Following further correspondence, Capita again referred Miss S to the email dated 19 September 2016, where it confirmed that the CETV was correct. It explained that if

PO-20221

Miss S remained unhappy or felt the CETV was incorrect, she could ask for the CETV to be verified by the Scheme Actuary, subject to possible payment of a charge. Miss S did not make a request.

8. Capita notified Miss S on 26 October 2016, that it did not consider her concerns to be a formal dispute and the CETV expiry date would not be extended. It confirmed the guarantee date on the CETV remained 25 November 2016.
9. With effect from November 2016, on advice from the Scheme Actuary, the Scheme adopted a revised CETV calculation basis to reflect current market conditions.
10. Miss S completed the CETV forms and decided to proceed with the transfer on 18 January 2017, this was outside of the guarantee period. Therefore, a new CETV was calculated on 24 February 2017, which had a lower value of £490,010.91. Miss S completed the relevant forms and the transfer was completed on 13 March 2017.
11. Miss S raised a formal complaint through the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She said she was dissatisfied that the Trustee had not considered the fact she had disputed the CETV. Therefore, she believed the original guarantee period should have been extended by a further three months.
12. On 3 April 2017, the Trustee addressed Miss S' complaint. The Trustee said that under Regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the Regulations**) (as shown as appendix 1), it did not believe that Miss S had entered into a 'dispute'. It said her concerns arose from disappointment rather than an actual concern regarding the actuarial calculation. This was demonstrated by the fact she did not ask for the original CETV calculations to be verified by the Scheme Actuary. Her complaint was not upheld.
13. On 19 September 2017, Miss S raised an appeal under stage two of the IDRP. In summary she said:-
 - She was unwell throughout 2017, including having hospital appointments, which contributed to her missing the guarantee deadline.
 - The issues raised with Capita in February/March were not covered in the letter of 3 April 2017. This was contrary to Capita's communication which said all matters would be dealt with via the Scheme's IDRP.
 - She believes a dispute was raised within the guarantee period. The Regulations say where there is a dispute the original guarantee period lapses and a revised guarantee period should be notified and applied from the time that the transfer value is confirmed. Her concerns had not been recognised as a dispute, despite the definition of 'dispute' being an argument or disagreement between two parties. She did not agree with the transfer value figure, so this should have been classed as a dispute, in accordance with Regulations.

PO-20221

- This issue has not been rectified which means the validity of the initial CETV should be extended.
 - She believed that Capita should provide far more adequate and comprehensive information in relation to transfer values.
14. Under the stage two IDRP, the Trustee provided a detailed response rejecting Miss S' complaint. It said:-
- Miss S did not raise a formal dispute about the methodology of the CETV, instead she asked if the CETV was correct. The Trustee was satisfied that the CETV was calculated appropriately and notes were provided promptly advising that the CETV was correct.
 - It explained that CETVs would differ between members for a number of reasons including the member's service and normal retirement age.
 - The Trustee recognised that Miss S was disappointed by the CETV amount, but it did not consider this was a dispute as set out in section 14 of the Regulations.
 - It understood Miss S was unsure of how the new CETV was calculated. But, the Trustee noted that Miss S had been provided with the general actuarial assumptions used by the Scheme Actuary. It also enclosed further details of how the calculations for the CETV were made.
 - The Trustee is required by legislation to regularly monitor and review the actuarial factors used to calculate transfer values to ensure they remain appropriate. The Scheme Actuary's advice would have been given to the Trustee at the conclusion of the triennial valuation and the Trustee would have decided on the actuarial factors to be used for future CETVs.
 - The latest triennial valuation had an effective date of 31 March 2015, and it was completed in November 2016. All CETVs calculated after November 2016, had to be consistent using the assumptions accepted by the Trustee on the advice of the Scheme Actuary.
15. Miss S remained dissatisfied and brought her complaint to the Pensions Ombudsman to be independently reviewed.

Adjudicator's Opinion

16. Miss S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or by Capita. The Adjudicator's findings are summarised below:-

- On 26 August 2016, Capita provided Miss S with a CETV of £573,672.56. It was valid until 25 November 2016. Capita had complied with the Regulations and provided a CETV with a guarantee period of three months.
 - Miss S raised a number of queries when she received the original CETV. She was dissatisfied with the value because she believed it should have been higher. At this point Capita provided responses to all of Miss S' queries, and in a timely manner. If Miss S had concerns about the CETV or associated benefits in the Scheme she should have raised those with Capita through her independent financial adviser. Capita acted appropriately and also offered Miss S the option of having the CETV verified by the Scheme Actuary. Miss S did not request verification.
 - Miss S argued that she had a dispute. On 26 October 2016, it was confirmed by Capita that it did not believe she had a dispute that came within section 14 of the Regulations. It was of the view that Miss S was disappointed with the amount of the CETV, but explained that was not the same as a formal dispute.
 - The Trustee's assertion that Miss S had not made it a formal dispute is correct. If Miss S considered that she had grounds for a valid dispute, she could have challenged the calculation methodology and sought verification. Although Miss S was deeply disappointed with the initial CETV figure, she had not raised any objection to the assumptions used.
 - Also, Miss S was aware of the deadline and was informed by Capita and the Trustee that it did not consider the points she had raised to be a dispute. She could have responded then and made a formal complaint. Therefore, the parties cannot be held responsible for her missing the initial CETV deadline and there are no grounds for extension deadline to be extended.
 - The second CETV, issued on 24 February 2017, was calculated using revised actuarial assumptions, and her Scheme benefits were valued as £490,010.91. This amount was transferred out on 13 March 2017. The Trustee provided an explanation of how the transfer value was calculated.
17. Miss S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss S provided her further comments which do not change the outcome. They are set out below:-
- The change in the transfer calculation was not communicated and explained properly.
 - Given the fact that the date of the last scheme valuation is usually the main factor that changes the methodology on transfer values, with a valuation date of 31 March 2015, it was not unreasonable to expect transfer values quoted on 30 June 2016, to take into account any changes as a result of the valuation.

- It was a major consideration for Miss S to make an informed decision to transfer out and access pension freedom options based on the very reasonable assumption that any March 2015 valuation would have been factored into the transfer basis in August 2016.
- The original decision to transfer was based on flawed information, Miss S believes she had no way of knowing the value would change.
- She considers that the Trustee did not communicate the change in the assumptions to be applied to future CETVs.
- She believes the Trustee should honour the original CETV.

18. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss S for completeness.

Ombudsman's decision

19. Miss S has made an assumption that the June 2016 CETV would have taken into account any changes to the methodology as at the valuation date 31 March 2015. This was not the case as the valuation was not completed until November 2016, and the change in the methodology used applied from that date, following the review by the Scheme Actuary.
20. The higher CETV was only guaranteed for three months. There was always a risk that assumptions could change if Miss S did not transfer out within the first guaranteed period. In Miss S' case her initial transfer value expired on 25 November 2016. Therefore, she could only rely on the quoted transfer value until its expiry date. The Trustee is not responsible for any decision made by Miss S, on whether it was more advantageous to transfer out and retire, or, alternatively, receive a pension from the Scheme.
21. Miss S has complained that she made her decision to transfer based on the higher CETV. I cannot agree that this is correct. She was fully aware of the revised amount quoted when the second CETV was issued on 24 February 2017, and she completed the relevant transfer forms and went ahead with the transfer.
22. Capita informed Mrs S on 26 October 2016 that it did not consider the concern she had raised on the valuation, to be a dispute and she did not rebut this conclusion. She did not take up the offer to have the assumptions and methodology verified. Therefore, I agree with Capita's assessment that it was not a dispute but simply a query, so there are no grounds for an extension to the guarantee period to be granted. In any event Mrs S has already accepted the second CETV and taken a transfer.
23. I am satisfied that Miss S has received the correct CETV.

PO-20221

24. I do not uphold Miss S' complaint.

Anthony Arter

Pensions Ombudsman
29 August 2018

Appendix one

The Occupational Pension Schemes (Transfer Values) Regulation 1996

Part III – Guaranteed Statements of Entitlement and Calculation of Transfer Values

6 Guaranteed statements of entitlement

(1) Subject to paragraph (1A), the guarantee date in relation to a statement of entitlement must be-

- (a) within the period of three months beginning with the date of the member's application under section 93A of the 1993 Act (salary related schemes: right to statement of entitlement) for a statement of entitlement;
- (b) where the trustees are unable to provide a statement of entitlement for reasons beyond their control within the period specified in sub-paragraph (a), within such longer period not exceeding six months beginning with the date of the member's application as they may reasonably require.

14(1) The regulation applies where-

- (a) the member disputes the amount of the cash equivalent shown in the statement of entitlement within three months beginning with the guarantee date; or
- (b) the member's cash equivalent shown in the statement of entitlement has been reduced or increased under regulation 9, including where the member disputes the basis or amount of the increase or reduction within three months with the date that the member is informed in writing that the cash equivalent has been reduced or increased.

(2) where this regulation applies-

- (a) if the member has made an application to take the cash equivalent under section 95(1) of the 1993 act, that application lapses;
- (b) the time for making a fresh application to take the cash equivalent under section 95(1) is extended so that the time is three months beginning with the date on which the member is informed in writing of-
 - (i) the reduced or increased cash equivalent; or, if later,
 - (ii) where the cash equivalent shown in the statement of entitlement has been disputed, the finally determined cash equivalent following the dispute, even where the cash equivalent has not changed; and

PO-20221

(c) the time specified in section 99(2)(a) (trustees' duties after exercise of option) is extended so that the time is six months beginning with the date on which the member is informed in writing of-

- (i) the reduced or increased cash equivalent; or, if later,
- (ii) where the cash equivalent shown in the statement of entitlement has been disputed, the finally determined cash equivalent following the dispute, even where the cash equivalent has not changed.