

## Ombudsman's Determination

Applicant	Ms S
Scheme	New Airways Pension Scheme (the <b>Scheme</b> )
Respondents	British Airways Pension Services Limited ( <b>BAPSL</b> ), New Airways Pension Scheme Trustee Limited (the <b>Trustee</b> )

## Outcome

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

## Complaint summary

3. Ms S alleges that BAPSL provided misleading information and made other administrative errors following her subsequent enquiries. Ms S says she delayed exercising her right to take a cash equivalent transfer value (**CETV**) as a direct result.
4. Ms S maintains that she was treated unfairly and differently from her colleagues, as she was not specifically informed about impending changes to the Scheme's transfer factors.

## Background information, including submissions from the parties

5. Ms S left the Scheme in May 1994, with a deferred pension entitlement. She attained normal pension age (**NPA**) in early November 2016.
6. As Ms S did not contribute towards a spouse's pension during her Scheme membership, her pension has no dependant's pension attached to it.
7. Following a review of the Scheme's transfer out basis, the Trustee agreed to new transfer factors being applied with effect from 1 April 2016. The Trustee also agreed that all members would be given notice of the changes.

8. The Trustee approved the following wording for all new retirement quotations, and any correspondence quoting a transfer value, issued to members after September 2015:

***“Important changes to Transfer Values from 1 April 2016***

The Scheme’s Actuary regularly reviews the factors used to work out some of your pension options. From 1 April 2016 the factors used to calculate the Scheme’s transfer values will be updated. These changes are likely to mean a decrease in transfer values for members close to, at, or over [NPA] and an increase for younger members. The size of the increase or decrease will depend on your age as well as financial market conditions at the time any calculation is run for you.

Members considering transferring their benefits from the Scheme to another pension arrangement may wish to bear this information in mind when deciding the timing of any potential transfer. ...” (the **CETV Paragraph**).”

9. The impending changes were publicised on the Scheme’s website in October 2015.
10. The Trustee publishes a quarterly online newsletter to help keep members up to date with information concerning the Scheme and the Trustee’s activities. The November 2015 edition, (the **November Newsletter**), states:

**“Transfer Value Changes**

We reported last time that a key work stream within the valuation process is the review of Scheme factors used to calculate member and deferred pensioner retirement options including...transfer value calculations. Factors are reviewed from time to time and at least every three years...The Government’s introduction of Defined Contribution flexibilities has led us to review factors used to calculate the Scheme’s transfer values. From 1 April 2016 transfer factors will be updated...”

11. The November Newsletter reiterated that the impending changes would likely lead to a reduction in transfer values for members nearing, at, or over NPA. It recommended that active or deferred members, considering the possibility of a transfer, take independent financial advice.
12. In February 2016, the Trustee issued that month’s edition of the ‘in-Focus Publication’ (the **Publication**). It emphasised that transfer factors would change with effect from 1 April 2016. It also highlighted that this would likely mean a decrease in transfer values for members nearing, at, or over NPA. It said that active or deferred members, considering the possibility of a transfer, should bear this in mind and always seek advice before making a final decision about their pension benefits.
13. Ms S was sent a generic email with a link to the November Newsletter and the Publication on 9 November 2015 and 23 February 2016 respectively (the **Emails**).

14. In preparation for her retirement, Ms S contacted BAPSL on 11 February 2016, to discuss her options. The call handler's contemporaneous note of that call records that Ms S was informed that she could take a tax free lump sum on her retirement, and that she would be provided with details of her options automatically in advance of her NPA. The call was not recorded.
15. In response to her enquiry, Ms S was issued with a 'deferred pension illustration' on 20 February 2016 (The **February Illustration**). It quoted a CETV of £383,549 guaranteed for three months from 29 February 2016. The covering letter stated:

"We will automatically send a full retirement quotation to you 5 months before your [NPA]. However, if you would like an early retirement quotation please do contact us.

As an alternative to leaving your pension in the Scheme, at any time before you start to draw your pension, you can choose to transfer the value of your benefits to another registered pension arrangement. This value of your benefits is called a 'cash equivalent transfer value'. You can ask us for a statement of your cash equivalent transfer value at any time (but usually not more than once in any 12-month period."

....

... in most cases, you must obtain financial advice. The Pension Regulator has also published "Risk Warnings," which you should read before deciding to proceed with a transfer. These are available on the "Forms" page of our website..."
16. The February Illustration stated that Ms S could find full details about transferring her additional voluntary contributions (**AVCs**), or her main Scheme pension, in the transfer out packs available from the 'Forms page in the transfer section' of the Scheme's website. However, BAPSL failed to include the CETV Paragraph drawing her attention to the April changes to transfer value calculations.
17. Ms S was issued with a normal retirement illustration on 22 June 2016. It quoted a CETV of £335,316, guaranteed for three months from 22 June 2016.
18. On 11 July 2016, Ms S contacted BAPSL to query the material difference in the latest CETV when compared to that quoted in the February Illustration. On 14 July 2016, Ms S requested a new CETV and a calculation using the previous transfer out factors. In its reply of 3 August 2016, BAPSL clarified that the CETV quoted in the February Illustration had expired. BAPSL did not provide Ms S with updated figures as the CETV issued on 22 June 2016 had not yet expired.
19. In the period that followed, Ms S made enquiries concerning the Scheme and its internal dispute resolution procedure (**IDRP**). BAPSL's note of a call on 10 August 2016, (the **Call Note**), indicates that Ms S was informed that:

“if she invoked the IDRPs, subsequently transferring out would not prejudice the IDRPs”.

20. Ms S was provided with an updated CETV of £359,652 on 11 August 2016, guaranteed until 30 November 2016. Later that same month, Ms S complained to the Trustee that the February Illustration ‘did not explicitly make her aware or warn her about a significant and materially important impending change to transfer factors effective from April 2016’.
21. In early January 2017, Ms S asked the Trustee to confirm that she could take a CETV while her complaint was ongoing. After receiving confirmation, she elected to take a CETV of £379,070 (the **Final CETV**) to Old Mutual Wealth.
22. The Final CETV, approximately £4,500 lower when compared to the CETV of £383,549 (the **Higher CETV**) quoted in the February Illustration, was paid to Old Mutual Wealth in early February 2017.
23. Ms S has explained that, due to her personal circumstances, she considered that transferring out of the Scheme would provide better protection for her dependants. Based on her discussions with BAPSL on 11 February 2016, she stated to the call-handler that ‘a transfer was her only sensible option’. She therefore asked for a CETV, and confirmation on any further action she needed to take. However, the call handler said that she did not need to take any action at that time, as her retirement pack would be issued five months before her NPA. In her view, BAPSL missed two opportunities to alert her to the impending changes in the transfer factors: during that call and when writing to her with the February Illustration.
24. Ms S says BAPSL misled her about when to exercise her right to a CETV, failed to provide her with a CETV on request, failed to notify her about impending material changes to the Scheme’s transfer values basis, and failed to follow the guidelines issued by the Trustee at that time. Furthermore, she was misinformed on 10 August 2016, that she could not transfer out until the IDRPs process had been completed.
25. Had she been specifically notified that the transfer factors would be changing, Ms S is certain she would have applied for the Higher CETV in time for the transfer to be completed before April 2016. Ms S has provided an email from her independent financial adviser, (the **IFA**), concerning investment returns achieved by another client invested in ‘their portfolio’. The IFA states that the client achieved growth of 23.8%, net of charges, over the period between 1 April 2016 and 13 January 2017.
26. Further comments from Ms S are provided below.
  - She was aware that she could transfer out before her NPA. It was for this reason that she contacted BAPSL in February 2016 to seek its advice. The advice she received had a direct bearing on her decision to delay taking a CETV. Had she been correctly advised, it is inconceivable that she would have delayed it.

- The February Illustration was consistent with the “verbal advice” she was given by BAPSL, and reinforced her understanding that she did not need to take any action at that time to transfer her pension.
  - She specifically asked “for the pros and cons’ associated with the various pension options” available to her. It is only fair and reasonable to expect BAPSL, as the pension experts, to have advised that she could potentially be disadvantaged by delaying the decision to take a CETV. Or, at the very least, included the CETV Paragraph in the February Illustration.
  - BAPSL failed in its duty of care to her as a deferred member, to provide clear and unequivocal warnings in the February Illustration.
  - Furthermore, the February Illustration did not provide any specific instructions concerning how she could apply for a transfer out pack. She assumed that by requesting a CETV she was also making an ‘application’ to accept it. She has since become aware that BAPSL also failed to send her the relevant transfer forms.
  - The Emails did not negate BAPSL’s responsibility to provide explicit notification about the changes. The Emails did not specifically point to important changes to transfer values. When she contacted BAPSL, in February 2016, she was still nine months away from her NPA. She was unsure if she was on the “cusp” of those whose NPA was affected. Consequently, she relied on BAPSL providing correct information so that she could make an informed decision.
  - The Financial Conduct Authority (the **FCA**), requires that customers be treated fairly. BAPSL treated her less favourably compared to her colleagues who were quoted the CETV Paragraph.
  - During her call to BAPSL on 11 July 2016, she repeated that it would be in her best interests to transfer out as it would provide financial protection for her family.
  - BAPSL prejudiced the outcome of her complaint by not addressing her misunderstandings about when a CETV could be provided. It should have made it clear, early in the process, that she could take a CETV while her complaint was ongoing. The continued delay in clarifying the position caused her to lose more money.
27. The Trustee does not accept that BAPSL’s failure to include the CETV Paragraph in the February Illustration amounts to discrimination or a breach of duty. Nor does it accept that Ms S has been financially disadvantaged. The Trustee says other information was made available to Ms S that confirmed the position.
28. Further comments from the Trustee are provided below.
- The Trustee is not under any legal obligation to notify scheme members of an impending change in actuarial factors.

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- The Trustee has been unable to verify that Ms S specifically requested a CETV on 11 February 2016. BAPSL's note of that call, taken at the time, does not support that Ms S either stated that she was planning to transfer out, or that she asked for a CETV.
  - The February Illustration was intended as a 'high-level' update. It clearly stated that Ms S should contact BAPSL if she wanted a retirement pack or CETV. Where BAPSL receive an explicit request for a CETV, the standard practice is to send full transfer out paperwork, which would provide the more comprehensive details that a financial adviser would require.
  - The Call Note, and the fact that an updated CETV was issued to Ms S on 11 August 2016, does not support Ms S' assertion that she was told it would compromise the outcome of her complaint if she transferred out before the IDRPs had been exhausted.
  - As neither the Trustee nor the Scheme is a 'financial services provider' the FCA's requirement to 'treat customer fairly' does not apply.
29. However, the Trustee has acknowledged that BAPSL failed to comply with its internal procedure to include the CETV Paragraph in the February Illustration. It has offered £500 to Ms S to put right any non-financial injustice caused to her.
30. Ms S considers redress of £91,284 that is, 23.8% of the Higher CETV, plus compensation for any further alleged loss in investment returns, would be reasonable compensation.

## Adjudicator's Opinion

31. Ms S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-
- Although BAPSL failed to follow the correct internal process in Ms S' case, other information that was made available to Ms S contained sufficient warnings about the impending changes in the factors.
  - In view of the information that Ms S did receive, an Ombudsman would likely consider that she reasonably ought to have been aware that the factors would change from April 2016.
  - It is impossible to verify Ms S' understanding of what was either discussed, or agreed during the call on 11 February 2016. Likewise, during her subsequent telephone conversations with BAPSL.
  - Notwithstanding this, there was nothing preventing Ms S from following up her alleged request for a full transfer pack. If Ms S had wanted to take a CETV at that time, there was nothing precluding her from taking that course of action.

- In the absence of independent evidence to substantiate that Ms S was wrongly informed on 10 August 2016, about her option to transfer, an Ombudsman would likely take the view that it would have been more reasonable to infer from the updated CETV that was issued to her on 11 August 2016, that she could still exercise her right to transfer even though her complaint was ongoing.

32. Ms S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms S has provided her further comments but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Ms S for completeness.

### **Ombudsman's decision**

33. Ms S has asked that I review her complaint in relation to the alleged breach of duty of care owed to her on the part of BAPSL and the Trustee.
34. Ms S does not accept that details about the changes were made available on the Scheme's website. Ms S has highlighted that three of her former colleagues, who also had access to the online information, all received the CETV Paragraph in their quotations. In Ms S' view, the information that they received related to the personal impact of the April changes to their CETV. She did not receive any such warning. And, as she did not reach NPA until November 2016, she based her decision to delay taking a transfer on what BAPSL told her at the time.
35. Ms S contends that the duty of care owed to her by BAPSL included taking reasonable care when providing information to ensure that it was accurate and fit for the purpose for which it was intended to enable her, as the recipient, to make an informed decision. In her view, this included ensuring that she could "fully understand the nature, and effect of the transaction and the risks associated with it", to allow her to make a properly informed decision about whether to exercise her right to take the CETV quoted in February 2016. BAPSL ought to have known that she would rely on the skill and knowledge of its administrators. In failing to 'present her with a full and proper explanation' of the changes to the transfer factors, and to disclose the potential impact of her delaying her decision to take a CETV until after April 2016, BAPSL breached its duty of care.'
36. Ms S also says that BAPSL, and the Trustee, owed a duty to take reasonable care not to misstate, or omit facts, in its records of their telephone conversations, or any subsequent correspondence. By allegedly focusing solely on one aspect of what was discussed on 11 February 2016, and providing an incomplete and inaccurate record, Ms S says BAPSL and the Trustee breached that duty, and acted contrary to the Pensions Regulator's guidance on record keeping.
37. Firstly, I am not aware of any legislative requirements that compels trustees of pension schemes to notify scheme members that they are reviewing or making changes to actuarial factors. Nor am I aware of any legal duty on either trustees, or

pension administrators, to disclose to members the potential impact of accepting a CETV, or delaying taking a CETV, either in generic terms or in personalised statements. Nor is there a duty to advise members on the pros and cons associated with their retirement options. The Trustee voluntarily adopted a duty to inform members of the forthcoming changes and have admitted that they did not fulfil it, but that does not mean that they adopted a duty to advise on the pros and cons of Ms S's decision whether or when to transfer out.

38. Ms S draws a comparison with those of her former colleagues that did receive quotations containing the CETV Paragraph. While it is clear the February Illustration did not include it, I am not persuaded that this supports a finding of unfair or differential treatment in the circumstances.
39. In omitting to include the CETV paragraph in the February Illustration, BAPSL failed to comply with its own internal procedures. However, I do not consider that this omission caused Ms S to incur financial loss.
40. Ms S asserts that she was given the wrong advice in the call of 11 February 2016, in that she was told she did not need to take further action at that time. She says she based her decision not to transfer at that time on this call. neither BAPSL nor Ms S recorded the conversation. I therefore have no means by which to independently verify either party's version of what was discussed. I have already found, BAPSL were under no duty to provide advice about which course of action was most financially beneficial to Ms S and there is no evidence that BAPSL mistakenly stepped over the line and provided advice which they were not authorised to give.
41. I find that Ms S was correctly informed that she did not need to take any action at that time. Ms S has acknowledged that she was aware that she could transfer out at any time before her NPA, and that she should appoint an IFA to obtain financial advice.
42. The February Illustration, issued following the call in question, stated that as an alternative to leaving her benefits in the Scheme, Ms S could choose to transfer those benefits to another registered pension scheme. It also mentioned that Ms S could find full details about transferring her benefits in the transfer section of the Scheme's website. Ms S has given no indication that she checked the website at the time.
43. Although I acknowledge that Ms S is not a pension expert, I do not agree that it was a reasonable inference that a request for a CETV would also be considered as an application to accept it. Had Ms S been intent on transferring her benefits at that time, she should have contacted BAPSL in good time before the expiry date stated in the February Illustration if she was unclear how she could go about accepting that CETV. Once it had expired, so did Ms S' right to take it.
44. Ms S says it is inconceivable that she would have delayed had she been advised correctly. As I have already found, BAPSL were not under a duty to advise her. I have to consider what she would have done if she had been given the missing information,



but no advice about the pros and cons of transferring. Ms S points out that when she made her enquiry she was still nine months away from NRA and not being an expert, she would in any event, not have known how to judge whether she was 'close to' NRA or not. I conclude that even if she had been given the missing information, like most people, she would have needed specific advice from somebody qualified to give it in order to understand where her best financial interests lay. I therefore do not think it likely that she would have acted differently even if she had been given the missing information.

45. Consequently, what she has suffered is a loss of opportunity rather than actual financial loss.
46. The updated CETV, issued on 22 June 2016, was still within its guaranteed period when Ms S requested a new CETV on 14 July 2016. I therefore do not agree that BAPSL made an administrative error by not issuing a new CETV at that time.
47. Turning now to Ms S' assertion that she was misinformed on 10 August 2016, about her right to take a CETV while her complaint was still being considered by the Trustee. It is clear from the evidence that Ms S asked for clarification from BAPSL on the issue on 10 August 2016, but the call record does not indicate Ms S was told she could not take a CETV while the IDRPs were ongoing.
48. BAPSL agree that it should have provided the warning in the February illustration. As Ms S has been unable to substantiate her claims that she was given incorrect information on 10 August 2016, I agree that the offer of £500 made by the Trustee for non-financial injustice is reasonable, and I do not make any further award. While I accept that BAPSL could have clarified the position earlier on in the process, I do not consider the omission sufficiently serious to justify a further finding of maladministration in the circumstances.
49. Therefore, I do not uphold Ms S' complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
30 November 2018