

Ombudsman's Determination

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| Applicant | Mr N |
| Scheme | BP Pension Fund (the Fund) |
| Respondent | BP Pension Trustees Ltd (the Trustee) |

Outcome

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

Complaint summary

3. Mr N's complaint concerns the reduction of his cash equivalent transfer value (**CETV**). He said that he only became aware of the reduction after his benefits were transferred and that failure to notify him and explain the reduction prior to the transfer, amounts to maladministration.

Background information, including submissions from the parties

4. Mr N was employed by BP and was an active member of the Fund. On 30 November 2016, Mr N was made redundant by BP, after 31 years of service. Following his redundancy, he made preliminary enquiries about transferring his pension benefits out of the Fund.
5. In December 2016, Mr N, through his Financial Advisers (**IFA**), requested a CETV of his benefits. Between December 2016 and February 2017, the Fund sent Mr N three warning letters informing him of the risks of transferring.
6. On 25 January 2017, the Fund sent Mr N and his IFA a transfer quote informing him that the CETV of his benefits was £2,354,243 and that it was valid for three months from 16 January to 16 April 2017.
7. Following receipt of the said quote, Mr N's IFA requested some further information from the Fund. On 2 February 2017, the Fund replied to the IFA providing the requested information. Included in that letter was a revised lower CETV of £2,347,376 (**the second quote**) but, the Fund did not explain why the CETV had been reduced in

the second quote. The discharge form that accompanied the second quote had a revised period of validation but the higher CETV was stated on the discharge form.

8. In February and March 2017, Mr N's IFA completed two suitability reports for him concerning if he should stay within the Fund or transfer his benefits. On 3 April 2017, Mr N signed the discharge form that was included with the second quote.
9. The Fund asserts that on 25 May 2017, prior to the transfer, it had informed Mr N's IFA, that the amount to be transferred was the amount that was stated on the second quote and not the amount on the signed discharge form. The Fund does not have a recording of that telephone call, but it produced a log of the telephone conversation. The log reads:

"Amt quoted on TV statement was lower than that quoted on discharge Form A. TV statement has correct amt. I called [the IFA] and explained that amt per TV statement would be paid + AVCs"
10. On 5 June 2017, Mr N received a letter from the Fund informing him of the amount that was transferred. On 9 June 2017, Mr N emailed the Fund, as he was unhappy that a lower figure than he was initially quoted, was transferred. On the same day, the Fund responded to Mr N and explained that the discrepancy was due to an administrative error.
11. Mr N asserts that following confirmation that a mistake had been made regarding his CETV, further work had to be carried out by his IFA, but this did not feature in a separate report.
12. On 21 June 2017, the Fund informed Mr N's IFA why the figures in the first and second quotes differed. It also offered Mr N £300 for the distress and inconvenience caused.
13. Dissatisfied with what had occurred, Mr N made a formal complaint to the Fund through its internal dispute resolution procedure (**IDRP**).
14. In the IDRP decision dated 19 October 2017, the Trustee did not uphold Mr N's complaint. It explained that the difference in the figures on the first and second quotes, was due to reconciliation between the Fund's and HMRC's records. The Trustee agreed that the difference in the CETV on the two quotes should have been highlighted to Mr N and, the Fund should also have ensured that the amount stated on the second discharge form was correct.
15. In recognition of the maladministration, the Trustee offered Mr N £750 in compensation for the distress and inconvenience caused. The Trustee explained that it followed guidance issued by this Office and was satisfied that the offer was in line with awards the Ombudsman may make in similar circumstances. The Trustee also explained the factors that were considered when deciding whether or not to uphold Mr N's complaint.

16. Dissatisfied with the Trustee's response, in November 2017, Mr N sent a further letter to the Trustee. The Trustee responded to Mr N and addressed his further queries. The Trustee also reiterated that it was satisfied that the £750 offered was in line with what the Ombudsman had awarded for similar cases. The Trustee explained to Mr N that "...in the absence of any new factual evidence in support of [his] original complaint, the Trustee is unable to reopen [his] complaint or review the decision reached by the Trustee's IDRP Committee."
17. Unhappy with the further response he received from the Trustee, Mr N referred his complaint to this Office. As well as providing a background of the events that led to his complaint, he made the following points:
 - he understands the established legal principle that the provision of incorrect benefits does not in itself create a legal entitlement to receive them. However, what he is asking for has resulted from the Fund's error. Therefore, he should be put back into the position that he would have been in, but for the maladministration;
 - he made the decision to transfer because greater flexibility was better than none. Although it is difficult to say with certainty, if there was no confusion at the beginning, he does not believe that he would have made a different decision. He would probably have been swayed by the greater flexibility. It is fair to say that his advisers felt his case was on the cusp rather than being cut and dry;
 - he would consider the option to be reinstated to the Fund if the Trustee agreed to honour all pension increases and pay all associated costs which would include loss of interest, transfer charge, etc;
 - he has made certain decisions to mitigate the risks associated with the transfer. Therefore, the decision to be reinstated into the Fund is not as straightforward as it would have been in early 2017, had the Fund done the correct thing and were upfront about the error, and asked if he still wanted to proceed with the transfer;
 - in his view, deliberately ignoring the error was unacceptable and completely unethical, given the size of his pension fund;
 - he would like the Fund to pay compensation in excess of the £750 it has offered and that it also pays for the financial loss he incurred as a result of his IFA having to rework their report, attend meetings, pursue IDRP on his behalf and assist him with elements of his complaint; and
 - he believes the Trustee is in breach of Regulation 11 (5) of the Occupational Pensions Schemes (Transfer Values) Regulations 1996 (**The Transfer Regulations**).

18. In response to Mr N's complaint, the Trustee made the following points:

- the first quote that was sent to Mr N and his IFA on 25 January 2017, was for £2,354,423 and it included pre-97 GMP rights of £37,851. No AVCs were included in the first CETV quote;
- shortly after the first quote was sent, a further CETV was issued to Mr N's FA on 2 February 2017. The second quote reflected an updated split of Mr N's GMP and non-GMP benefits to reflect the GMP values held by HMRC. This led to a reduction of the original CETV quoted by £7,047. The second quote also included AVCs;
- the Fund did not explain why the CETV had been reduced in the second quote. The covering letter with the second quote should have highlighted the difference between the two CETVs. The Trustee has acknowledged this in its response to the IDRP complaint;
- although the transfer value quoted in the second quote was correct, the discharge form which accompanied the second quote incorrectly stated the higher CETV. The Trustee has accepted that administration errors occurred during the handling of this case and has offered Mr N £750 in compensation;
- prior to making the transfer, the Fund informed Mr N's IFA in a logged telephone conversation, on 25 May 2017, that the amount to be paid was the amount stated in the second quote plus Mr N's AVCs and not the amount on the discharge form which was incorrect. The IFA did not challenge this at the time of payment; and
- under the Trust Deed, the Trustee may only accept a transfer of assets in respect of a member who is currently an employee, but Mr N is not an employee. The Trustee could potentially reinstate Mr N into the Fund, and therefore treat him as if he had never transferred out, under its discretionary power. However, there would have to be compelling reasons for the Trustee to consider reinstating the member.

Adjudicator's Opinion

19. Mr N'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:-

- It was agreed and accepted that there was maladministration on the Fund's behalf, in relation to Mr N's CETV. Therefore, the Adjudicator considered what impact the maladministration had on Mr N.
- Having considered Mr N's complaint, it was the Adjudicator's view that, prior to the completion of the transfer, the Fund had informed Mr N's IFA of the difference in the figures on the first and second quotes. The Adjudicator appreciated that the Fund did not contact Mr N directly to inform him of the reduction. However, as Mr N was being represented by the IFA, she did not consider it was unreasonable for the

Fund to only inform Mr N's IFA, that the amount that would be transferred was the figure quoted on the second quote and not the figure quoted on the discharge form.

- The Adjudicator appreciated that Mr N incurred further costs when he received confirmation of the amount that was transferred, as his IFA had to complete a further financial report. However, the Adjudicator did not consider that an Ombudsman would direct the Trustee to compensate Mr N for any costs in this regard. This is because, prior to the transfer, the Fund made Mr N's IFA aware that the amount that would be transferred was not what was on the signed discharge form, rather, it was the amount that was stated on the second quote. In the Adjudicator's opinion, it would not have been unreasonable at that time, for Mr N's IFA to request the transfer be placed on hold, until it discussed the difference in the figures, with Mr N.
- It was the Adjudicator's view that, if Mr N's IFA had done so, and as a result Mr N had incurred further costs because the IFA had to complete further reports, it would have been reasonable for the Trustee to compensate Mr N for any charges he incurred as a result of the Fund's maladministration.
- However, as Mr N's IFA did not request that the transfer be stopped or postponed, despite being aware of the error, the Adjudicator did not think I would direct the Trustee to pay any costs Mr N incurred following the transfer.
- In the Adjudicator's opinion, it is not unusual for Pension Funds to reconcile their records with HMRC's to ensure that the correct benefits are paid to their members. However, she believed that when the Fund sent Mr N's IFA the second quote, it should have included a cover letter that explained why there was a reduction in the CETV.
- Therefore, it was her view that the Trustee was in breach of Regulation 11(5) of The Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the Transfer Regulations**) because it had failed to notify Mr N or his IFA of the following:
 - why the CETV was reduced;
 - that it was relying on Regulation 9 (5) of the Transfer Regulations; and
 - that Mr N had a further three months, beginning with the date on which his FA was informed of the reduction, to make a written application to take the revised cash equivalent.
- Regulation 9 (5) of the Transfer Regulations allows the CETV shown in a statement of entitlement to be reduced or increased (as appropriate) to the correct amount, in cases such as this, where the amount initially shown differs from the correct amount. The Transfer Regulations do not provide for the application to lapse in such circumstances.
- The Adjudicator also believed that the Fund should have made sure that the correct figure was on the discharge form enclosed with the second quote. However, the Trustee recognised that the Fund's failure to do so amounted to maladministration

and, that it would have caused Mr N significant distress and inconvenience. In recognition of this, it offered Mr N £750.

- In the Adjudicator's view, the amount offered was not unreasonable and if the complaint was referred to me for a final decision I was unlikely to increase the Trustee's offer.
- Therefore, while the Adjudicator appreciated Mr N's disappointment that his CETV was reduced, it was her view that his complaint should not be upheld.

20. Following Mr N's receipt of the Adjudicator's Opinion, there was further correspondence between Mr N and the Adjudicator regarding the contents of the Opinion.

21. Mr N did not accept the Adjudicator's Opinion and in response made the following points:-

- He wants confirmation that the Adjudicators' Opinions are based on verifiable facts rather than supposition. The Adjudicator said that she cannot be certain of the details of the call between the Fund and the IFA. Therefore, she has based her Opinion on supposition. The Pensions Ombudsman's values state: 'we look at the facts.'
- He does not believe the Adjudicator's Opinion is based on an acceptable standard of proof. Therefore, he would like confirmation that the Adjudicator relied on verifiable facts and not mere supposition.
- It appears that the Adjudicator has relied on supposition and has erred on the side of the Fund, apportioning all blame for any economic loss he has incurred, to his IFA.
- He believes he is entitled to reasonable compensation in relation to the economic loss he incurred due to the Fund's failure to follow due process. This should be paid in addition to the compensation for the significant distress and inconvenience he has experienced.
- The Adjudicator accepts that the Trustee was in breach of Regulation 11 (5) of the Transfer Regulations. He does not understand how the Adjudicator can say that neither him nor his IFA were notified of the reduction but then use the counter argument, based on supposition, to maintain that his FA was notified and that it was his IFA's fault that the transfer was allowed to go ahead. They were either notified or not.
- He incurred economic loss which was over and above the compensation provided for distress and inconvenience. He was directed by the Fund to follow its IDRP. Nothing he did could be considered unreasonable and he rightly used the service of his IFA to go through the IDRP process.

- He wants confirmation that the Pension Schemes Act 1993 (c.48) (as amended by subsequent Acts) 97 (3b) (**the 1993 Act**) applies to his case. He queried if the transfer was null and void as no second application was formally submitted after the first one lapsed.
 - In her Opinion, the Adjudicator shifts the blame for any economic loss from the Fund to his IFA, for failing to halt the transfer and thus incurring costs associated with preparing his case for the Fund's IDRP.
 - The Fund wrote to him on two occasions to notify him of administrative events. Yet, where a significant error had occurred, it did not inform him directly. The Adjudicator based her Opinion, concerning his claim for economic loss, on the basis that the Fund did not need to inform him directly of the reduced CETV. However, he queried why the Adjudicator believes this inconsistent approach is acceptable in this case.
 - He refutes the assertion that his IFA was made aware, in any sense of the word.
 - It is unacceptable for pension funds to produce a series of CETVs rather than wait until any reconciliation has been completed and such behaviour should not be excused.
22. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

23. Mr N was subject to the CETV provisions of the 1993 Act. On application, he was entitled to a written statement of entitlement which was guaranteed to a given date. The statement should be the best estimate of the amount at the guarantee date which is required to make provision within the scheme for a member's accrued benefits, options and discretionary benefits. The Trustee must calculate and verify the initial cash equivalent in accordance with the requirements of the Transfer Regulations. In this case, the calculation provided in the first statement was not a best estimate and/or it had not been accurately verified. This failing was not fully corrected when Mr N was sent discharge forms to complete in that although the CETV figure was corrected on a revised statement the discharge form itself still contained the incorrect figure.
24. The Fund has said that it informed Mr N's IFA of the error, during a telephone call on 25 May 2017. It provided a copy of the details of the call that was logged on Mr N's record. However, the Fund does not have a recording of the call. In so far as it is necessary to decide the outcome of the complaint, I have to make a finding about the content of that call on the balance of probabilities. As this telephone call occurred after the second quote was sent to Mr N's IFA and prior to the transfer of the benefits, I find that, on the balance of probabilities, that the Fund more likely than not, informed Mr N's IFA of the error, prior to the transfer.

25. I accept there was maladministration by the Fund when it failed to inform Mr N's IFA of the reason the CETV was reduced in the second quote. Additionally, there was maladministration by the Fund when it stated the incorrect CETV on the discharge form that was included in the second quote. However, I note that Mr N does not assert that he relied on the higher value in the sense that he would not have transferred had he appreciated that lower value. He acknowledges, and I agree, that in the scale of things the difference was marginal to that decision.
26. I turn now to the central issue of whether the maladministration has caused Mr N financial loss. It is not in dispute that a statement of an estimated guaranteed transfer value, is a statement like any other. It does not create a freestanding entitlement to the amount stated on its face. Plainly, the amount stated should be correct, but the statement is not a contractually binding offer. Actual financial loss can only flow from the consequences of any reasonable reliance on any incorrect statement which was made. I am not satisfied that Mr N has suffered any actual financial loss because of the incorrect statement. He did not commission further advisory work prior to the decision to transfer and he has received the value he was due from the Fund.
27. Mr N has argued that he should be entitled to recover costs incurred by his IFA taking the issue through IDRPs and to this Office. However, this office provides a free service and an award of costs is only granted in exceptional circumstances. This is because it should be possible for a complainant to bring a complaint to our Office without professional help.
28. Mr N has queried whether section 97(3)(b) of the 1993 Act applies to his CETV application with the result that his transfer is null and void.
29. The intention of section 97(2)(b) of the 1993 Act was to allow regulations to be made under which a CETV could be reduced (after already having been calculated) in circumstances where the pension scheme's funding is in deficit, as paying the full CETV would increase that deficit and would not be in the best interests of the remaining members. This does not apply in Mr N's case, as his case concerns incorrectly stated values in the original CETV. Therefore, section 97(3)(b) is not applicable in Mr N's case.
30. Details of the relevant sections of the 1993 Act are set out in the Appendix.
31. I agree with the Adjudicator that Mr N's application did not lapse because the Trustee breached Regulation 11(5) of the Transfer Regulations. However, I find that Mr N's application lapsed because of Regulation 14(2)(a) of the Transfer Regulations. Details of the relevant sections of Regulation 14 are set out in the Appendix.
32. Consequently, it is my view that the Trustee should not have gone ahead with the transfer, without issuing the necessary information under Regulation 11(5) of the Transfer Regulations, and until it had received a further section 95 application from Mr N, on the basis of the correct transfer value.

33. The legal effect of that breach is not that the transfer is void. The legal effect of a failure to comply with Regulation 11(5) is set out in Regulation 11(6) of the Transfer Regulations (details of Regulations 11(6) is in the Appendix). A breach may attract a regulatory penalty. The question of whether the Fund has breached these Regulations is a matter for the Regulator to consider and I cannot impose regulatory penalties.
34. To conclude, I accept that there has been maladministration by the Fund. However, I do not find that it has caused Mr N an actual financial loss.
35. I accept that this situation has caused Mr N significant distress and inconvenience. However, it is my view, that the compensation the Trustee has already offered Mr N for this, is not unreasonable.
36. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
5 February 2019

Appendix

The Pension Schemes Act 1993

Section 97 (2)(b) states:

“(b) that in prescribed circumstances a cash equivalent shall be increased or reduced.”

Section 97 (3)(b) states:

“(3B) Where regulations under subsection (2)(b) provide for the cash equivalent shown in a statement of entitlement to be increased or reduced after the member has made an application under section 95, the regulations may provide for the application under section 95 to lapse (but this does not prevent the member making a fresh application in respect of the increased or reduced cash equivalent).”

The Occupational Pension Schemes (Transfer Values) Regulations 1996

“11 Disclosure

(5) Where a cash equivalent shown in the statement of entitlement is reduced or increased under **regulation 9**, the trustees must notify the member of that fact in writing within ten days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday) and such notification must—

(a) state the reasons for and the amount of the reduction or increase;

(b) indicate the paragraph of **regulation 9** which has been relied upon; and

(c) state that the member has a further three months, beginning with the date on which the member is informed of the reduction or increase, to make a written application to take the cash equivalent shown in the statement of entitlement as so reduced or increased.

(6) Where any person fails to comply with any requirement imposed upon that person by this regulation, the Regulatory Authority may by notice in writing require that person to pay, within 28 days, a penalty which—

(a) in the case of an individual, shall not exceed £1,000; and

(b) in any other case, shall not exceed £10,000.”

“14 Extension of time within which member may exercise option to take a cash equivalent shown in the statement of entitlement

(1) This 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 a 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 beginning 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;

...