

Ombudsman's Determination

Applicant	Mr H
Scheme	Jacques Vert (2006) Pension Scheme (the Scheme)
Respondent	JV (2006) Pension Fund Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr H'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 H has complained about information provided to him regarding his cash equivalent transfer value (**CETV**) and the fact that this was subsequently reduced following a scheme buy out. He believes that the Trustee was aware that the transfer value would reduce and that he should have been informed. Had he been, he would have transferred his benefits at an earlier point when the CETV was higher.

Background information, including submissions from the parties

4. On 21 July 2016, the Trustee wrote to the Scheme's membership to inform them that it would be seeking to secure the Scheme's liabilities with an insurer. In this letter it said:

"Our advisers have told us that, all else being equal, it is possible that the transfer value and tax free cash lump sum that an insurer would pay to you will be lower than the amount the Scheme would pay you now.

This is for a variety of reasons, including the regulations insurers face. As these amounts are likely to be lower in future, we wanted to give you advance warning so you could consider your options with a suitably qualified independent financial adviser." [original emphasis]

5. On 31 October 2016, Mr H received a CETV valuing his benefits at £205,879. This would expire on 31 January 2017.
6. On 13 December 2016, Mr H received further correspondence from the Scheme's administrator, answering specific queries he had raised. It included the comments:

“By buying out a pension scheme, an insurance company takes responsibility for guaranteeing members’ benefits are paid in full...”

“All existing benefits, guarantees and protections will continue to apply if the pension scheme is bought out with an insurance company.”

7. On 20 April 2017, the Scheme was bought out by Legal & General (**L&G**).
8. On 2 June 2017, the Scheme’s sponsoring employer went into administration and the Scheme entered Pension Protection Fund (**PPF**) assessment.
9. On 14 September 2017, the Trustee wrote to members to inform them of the PPF assessment. This also contained comments that the Scheme was “fully funded”, and that members would receive “benefits in full.” It also said:

“For members who would like a transfer quote or one has been quoted but not previously accepted prior to 2 June 2017, the law does not allow the Trustees to pay transfer values during the assessment period. However, once assessment has been completed, the Trustees are able to revert to reconsider such requests.

If you are affected by the above, we will write to you personally to explain the situation in more detail.”

10. On 16 October 2017, the Trustee wrote to members informing them that as part of the PPF assessment it was established that the Scheme was in surplus. This letter also said:

“The Trustees have already secured your pension benefits in full with an insurance company.”

11. On 1 December 2017, Mr H wrote to the Trustee asking that his CETV of October 2016 be honoured, as some of his former colleagues had received letters confirming this would be the case. It has since been established that those letters were received in error. For different reasons, as I understand it, two former colleagues of Mr H received redress or backdated transfer values because of this error.

12. On 13 December 2017, the Trustee wrote to Mr H stating:

“The Trustees will only honour transfer values quoted last year if the member had returned their forms confirming their intent to proceed prior to the Pension Protection Fund assessment period. As we did not receive your forms, any transfer value will be calculated based on market conditions in force at that time.”

13. On 5 January 2018, Mr H wrote to the Trustee saying that he had stalled transferring at the time because of the likely high cost of advice, and said:

“...had I been informed of what may happen to the transfer value of my pension fund i.e a drop, then I would have pressed all buttons to transfer post haste.”
14. On 1 February 2018, Mr H invoked the Scheme’s internal dispute resolution procedure (**IDRP**).
15. On 9 February 2018, the Trustee responded, going straight to stage two of the IDRP to expedite the process. It explained that it would not be paying a transfer value on factors other than the current ones. It acknowledged that there were members whose transfer values were being honoured, but they had a guaranteed transfer value open for acceptance at the time the Scheme went into PPF assessment and so were in a different position to Mr H. Mr H was given notice that the basis for CETVs could change in advance of the October 2016 CETV he received, and he was being treated fairly and in line with other members whose CETV had expired.
16. On 12 February 2018, Mr H responded, saying:

“The crux of the situation, as I see it from my point of view, is that my failure to accept the transfer value quotation before its expiry on 31st January 2017, has resulted in this disappointing state of affairs, about which there is little I can do. Had I been made aware, in simple terms, that there was a deadline date, after which it was likely that my transfer value would suffer, then I am confident we would not be in this situation. I can find no mention of this deadline in all the correspondence that I received, only re-assurances that my pension benefits were safe and secure.”
17. On 28 February 2018, having received a new CETV, quoting a transfer value of £146,416.93, Mr H reiterated his complaint. He referred to the reassurances he had believed applied to the CETV and his expectation that the likelihood of the reduction ought to have been made much clearer and more specific.

Adjudicator’s Opinion

18. Mr H’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 below:-
 - The former colleagues Mr H referred to as receiving different treatment to him were in different circumstances. One was offered a backdated CETV because of an administrative oversight when they had already accepted the CETV, and the other was provided with incorrect information which resulted in a detrimental change of position, and which the Trustee agreed to redress. In both of those

cases there was maladministration, whereas in Mr H's complaint there was none, and he had never accepted the CETV offered to him.

- Mr H had been under a misunderstanding that reassurances about the security of his benefits equated to the CETV not changing. This was not the case, a CETV is subject to fluctuation, whereas, under a defined benefit scheme, the actual benefits payable under the scheme rules do not.
 - Some members had CETVs open to acceptance at the point that the Scheme went into PPF assessment, and their CETVs were extended until after the assessment period. However, Mr H's CETV had expired prior to the assessment period, and he had the full three month guarantee period.
 - The Adjudicator did not agree that the Trustee could, with certainty, have been aware, or made members aware, that a CETV offered by L&G after the buyout would be lower until the contract was signed, at the earliest. The L&G CETV factors could have changed to the member's benefit in advance of the contract being signed.
 - Irrespective of that, Mr H had been provided with sufficient warning that the CETV could change. The use of the guarantee period in itself implied that it could change for better or worse in the future and he had been given no assurances that the CETV would not change by the Trustee.
 - Although the Adjudicator thought the choice on emboldening the first half of the paragraph might draw attention away from the use of "likely to be lower in future", there was sufficient warning of a potential reduction and the two sections of the paragraph cannot be viewed in isolation. In any event, Mr H accepted that he had read the full paragraph.
 - Mr H has provided a transfer discharge form completed by one of the members who was given a backdated transfer value which discharged L&G from any liability and was apparently signed in January 2017. Mr H argues that this implies that the Trustee was aware that L&G would be the chosen buyout company, with the lower CETV factors, in January 2017, and should have warned members of this. However, the Adjudicator thought it was more likely than not that this was backdated with an earlier date by the member (when they had originally submitted a transfer request) as the contract with L&G was not signed until April 2017, and so it cannot have had any liability to any transferring members prior to that date.
19. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr H for completeness.

Ombudsman's decision

20. Mr H is disappointed that his most recent CETV is significantly lower than that provided to him in late 2016, however it is clear that this risk was disclosed to him by the Trustee and I do not see that there was any evidence that he was given reassurance that the CETV (as opposed to his benefits under the Scheme) could not reduce.
21. Having received that warning, Mr H opted not to pursue a transfer due to the possible costs. I appreciate that Mr H might not have understood the significance of the risk of fluctuation to the CETV, but that does not mean there has been an error on the part of the Trustee.
22. The other members Mr H refers to are in different situations and so cannot be compared to his. One of those members did sign a discharge form dated January 2017 which mentioned L&G, however this relates to a backdated CETV. Given the Scheme was not bought out by L&G until April 2017, the only logical reason this would refer to L&G was that it was issued after the contract was signed and the member backdated the signature to the point at which the original CETV was accepted. I do not agree that this is evidence that the Trustee was aware that L&G would be buying out the Scheme in January 2017.
23. Mr H has mentioned that the CETV issued to him on 31 October 2016 was not received until mid to late November 2016, therefore he did not have the full benefit of the 3 month guarantee period in order to make a decision. Whilst this might have been the case, two months should be a sufficient timeframe in which to pursue a transfer, and if Mr H felt so disadvantaged by this, he could have explained the situation to the Trustee at the time, perhaps gaining an extension. Delays in post being received do unfortunately occur, but in any event, such a delay in Mr H receiving the CETV cannot be said to be an administrative error on the part of the Trustee.
24. Therefore, I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
5 February 2019