

## Ombudsman's Determination

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| Applicant  | Dr D                                       |
| Scheme     | Nestle UK Pension Fund ( <b>the Fund</b> ) |
| Respondent | Nestle Pensions                            |

## Outcome

1. I do not uphold Dr D's complaint and no further action is required by Nestle Pensions.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Dr D's complaint concerns the reduction in the Cash Equivalent Transfer Value (**CETV**) of his benefits in the Fund not being transferred before the expiry date.

## Background information, including submissions from the parties

4. On 16 March 2017, Nestle Pensions received a request from Dr D's financial advisors Foinaven Asset Management (**Foinaven**) for a CETV of Dr D's benefits in the Fund.
5. On 25 April 2017, Nestle Pensions wrote to Dr D confirming receipt of the request. The letter explained that if Dr D intended to transfer to a defined contribution arrangement, and the value of his benefits exceeded £30,000, it must receive signed confirmation that Dr D had taken financial advice. The letter also stated:

"We are committed to ensuring all members have received the necessary information associated with transferring their accrued occupational pension fund benefits to another arrangement. We carry out our due diligence checks throughout the process, giving members sufficient time to consider all of their options

If, after receipt of the Transfer Quotation, a member wishes the transfer to proceed, we require members and the receiving scheme to answer a series of questions relating to a possible transfer. Please contact the pensions team to request your transfer questionnaires.

Once completed and received from both parties the team will review the information and issues the relevant discharge forms”

...

“On average the transfer value process will take between 8 and 16 weeks to complete assuming all information is received within a timely manner from all parties. This timeframe is not guaranteed and is to be used as a guide only.

We will need to see original identification such as a birth certificate or passport in respect of the transferring member as evidence of age which matches the name held on our files.”

6. On 4 May 2017, Nestle Pensions wrote to Dr D providing a CETV quotation of £297,742.00, which was guaranteed until 4 August 2017 (**the guarantee date**). The letter explained the requirements for the transfer to proceed, specifically that the TVO3A and TVO4A discharge forms must be completed and returned by the receiving scheme and member respectively. The letter reiterated that before Nestle Pensions issued its discharge forms, Dr D was required to fill in a questionnaire. The letter said:

“Should you wish to proceed we will need both you and the receiving arrangement to sign a set of discharge forms which are available upon request. You will be asked to complete a short questionnaire and your advisor/new pension provider will be asked to provide some information about the receiving arrangement before we can issue the discharge forms.”

7. Foinaven was not qualified to provide advice on transfers from a defined benefit scheme, so Dr D was referred to Clear Financial Solutions Ltd (**Clear Financial**). Foinaven continued to assist Clear Financial in the transfer of Dr D’s benefits.
8. On 27 July 2017, Foinaven called Nestle Pensions to request discharge forms for the transfer to proceed. This request was repeated on 31 July 2017. Nestle Pensions say that on this occasion it explained to Foinaven that a questionnaire had to be filled out first for the discharge forms to be issued.
9. On 1 August 2017, Nestle Pensions received a letter from Clear Financial stating that Dr D wished to transfer his benefits to Nucleus Financial Services Limited (**Nucleus**) and requested discharge forms. Clear Financial also provided confirmation that Dr D had received the required financial advice from one of its advisors. On the same day, Nestle Pensions wrote to Foinaven and said that for it to issue the discharge forms:

“we would ask that you provide the following documents and information. On receipt of the relevant documents and information, we will arrange to forward the relevant discharge forms:

1. The receiving scheme’s governing documentation and formal scheme documents e.g. trust deed and rules, member booklet, scheme account.

2. If the transfer is to an occupational scheme, please confirm the name of our member's current employer.
  3. An investment guide for the receiving scheme and details of the Investment service providers.
  4. Please confirm details if any loan back is available to the member.”
10. On 2 August 2017, Nestle Pensions wrote to Dr D stating that it had received a request from Foinaven for discharge forms and reiterated that it required proof that Dr D had received the required financial advice for the transfer to proceed. Nestle Pensions also sent Dr D the questionnaire and advised that it needed to be returned before it would issue discharge forms.
  11. On 4 August 2017, Nestle Pensions wrote to Clear Financial and said that its previous letter was not sufficient to guarantee the CETV. Nestle Pensions also said that it had not received a letter of authority from Clear Financial to act on Dr D's behalf.
  12. On 8 August 2017, Nestle Pensions received Dr D's completed questionnaire, dated 5 August 2017.
  13. On 15 August 2017, Nestle Pensions sent its TVO4A member discharge forms to Dr D. On the same day, Nestle Pensions emailed Clear Financial and said that it had not received Nucleus' Trust Deed and Rules, investment guide or confirmation of any loan back availability. Nestle Pensions said this information was required before it could issue the TVO3A discharge forms for the receiving scheme.
  14. On 21 August 2017, Nestle Pensions received Dr D's completed TVO4A member discharge forms.
  15. On 22 August 2017, Nestle Pensions emailed Clear Financial chasing the information it had requested on 15 August 2017. It also confirmed that Dr D's CETV would be recalculated as the guarantee date had expired.
  16. On 6 September 2017, Nestle Pensions recalculated Dr D's CETV at £271,435. On the same day, Nestle Pensions emailed Clear Financial confirming that it had received a copy of Nucleus' Trust Deed and Rules, however the investment guide and confirmation of loan back availability was still outstanding.
  17. On 11 September 2017, Nucleus emailed Nestle Pensions with the required outstanding information.
  18. Dr D complained to Nestle Pensions concerning the failure to transfer his benefits before the guarantee date. Dr D's complaint was not upheld by Nestle Pensions, so he brought his complaint to this Office. A summary of Dr D's complaint is set out below:-

- After receiving the CETV of 4 May 2017, Dr D took financial advice. Dr D assumed that it would be days and not weeks for the transfer to go through once Nestle Pensions received confirmation that he intended to transfer.
- Dr D accepts that safeguards are in place when transferring his benefits away from the Fund, however he questions the process by which these safeguards were communicated. Dr D argues that “what Nestle failed to achieve in several weeks could most definitely have been achieved in a few days if modern processes had been employed” such as the use of email instead of letters.
- Dr D argues that Nestle Pensions set out what was required for the transfer to proceed only when it received a transfer request from Dr D himself, not his representatives. Dr D says that had Nestle clearly detailed what it required from the outset, it would have received all the information on time.
- Dr D says that Nestle Pensions could have sent the transfer questionnaire once it was clear that he intended to transfer to another arrangement.
- Dr D provided a letter from Clear Financial who said that both it and Foinaven had requested discharge forms from Nestle Pensions before the guarantee date and gave a clear indication of his intent to transfer.

## **Adjudicator’s Opinion**

19. Dr D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Nestle Pensions. The Adjudicator’s findings are summarised briefly below:-

- The way in which Nestle Pensions chose to communicate with Dr D via letter does not amount to a failing on its part. There is no requirement or legislation which sets out how a Pension Scheme ought to communicate with its members. This is ultimately up to the Pension Scheme.
- Nestle Pensions letter of 4 May 2017 stated that the TVO3A and TVO4A discharge forms had to be completed and returned before the transfer could proceed. For the TVO4A discharge form to be issued to Dr D, Nestle Pensions required him to complete a questionnaire. The letter clearly stated that “Should you wish to proceed we will need both you and the receiving arrangement to sign a set of discharge forms which are available upon request”.
- The discharge forms were not requested until 27 July 2017, first by Foinaven and then, on 1 August 2017, by Clear Financial. However, this letter did not contain any details about the receiving scheme nor did it include a letter of authority to show that Clear Financial had authority to act on Dr D’s behalf, so it is understandable that Nestle Pensions did not action Clear Financial’s initial request.

- Having received the required authority, the transfer questionnaire was issued to Dr D on 2 August 2017. Dr D signed the questionnaire on 5 August 2017 and it was received by Nestle Pensions on 8 August 2017, after the guarantee date had expired. Dr D has said that Nestle Pensions could have issued the questionnaire once his intention to transfer were made clear. However, Nestle Pensions clearly explained to Dr D in its letters of 25 April and 4 May 2017 that it requires a questionnaire to be completed before it can issue its discharge forms.
- It is not disputed that both Clear Financial and Foinaven requested discharge forms from Nestle Pensions before the guarantee date. However, in its letter of 25 April 2017, Nestle Pensions state that it will carry out its due diligence check throughout the transfer process, and requires the receiving scheme to answer a series of questions before it issues its discharge forms so the transfer could proceed. Therefore, it was clear that these forms could not simply be issued on request and further steps had to be taken before they could be issued.
- On 1 August 2017, Nestle Pensions wrote to Foinaven in response to the telephone calls it received on 27 and 31 July 2017, explaining that further information was required to proceed with the transfer of Dr D's pension. The Adjudicator noted that Nestle Pensions did not specifically list what further information was required at an earlier point, and these further requirements were absent in its letter of 4 May 2017. However, Nestle Pensions' letter of 25 April 2017 makes clear reference to further questions once the transfer process has started.
- Had the transfer discharge forms been requested soon after receipt of the letter of 4 May 2017, there would have been sufficient time for the receiving Scheme information to have been provided, for Nestle Pensions to have carried out its due diligence checks and for the questionnaire to be completed and returned before the guarantee date. However, Nestle Pensions cannot be held responsible that the action which needed to be taken to start the process did not happen until 27 July 2017 just seven working days before the guarantee date.
- Finally, despite having provided details of the information it required on 1 August 2017, Nestle Pensions set out all the information it required for it to issue the TVO3A discharge forms directly to Clear Financial again on 15 August 2017, but it was not until 11 September 2017, a period of 19 working days, that this was submitted to Nestle Pensions. Thus, it was the Adjudicator's view that even if Nestle Pensions had set out what further information was required for the transfer to proceed on 27 July, this would not have been submitted before the guarantee date.

20. Dr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr D 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 Dr D, set out below for completeness:-

- He accepts that there is no requirement setting out how Nestle Pensions ought to communicate with its members when they choose to transfer their benefits. However, Dr D says that the Pensions Ombudsman endeavoured to ensure that such dealings are dealt with in a fair and just manner so that individuals are not mistreated.
- He questions Nestle Pensions' statement at it "will take between 8 and 16 weeks to complete assuming all information is received within a timely manner". Dr D has said that as the period between when his CETV was issued to the date it expired is only 12 weeks, Nestle Pensions' estimated timescale implies that it would not be able to complete the transfer process before the guarantee date anyway, and its transfer process is not fit for purpose.
- Nestle Pensions have made no pro-active attempt to improve its transfer process when compared to many other "more modern" schemes.

### **Ombudsman's decision**

21. Dr D does not agree with the method in which Nestle Pensions correspond with letters when communicating with member's who wish to transfer their benefits. Dr D has also referred to the practices used by other "modern schemes", who correspond by email. However, the way in which Nestle Pensions communicated with Dr D is not, in my view, the reason why Dr D was not able to secure his CETV of £297,742.00 by the guarantee date.
22. Nestle Pensions required the TVO3A and TVO4A discharge forms to be submitted by Nucleus and Dr D respectively, before the transfer could proceed. Before the TVO4A discharge form could be issued to Dr D, a transfer questionnaire needed to be completed and returned to Nestle Pensions. However, this requirement does not appear to have been understood by Dr D, Clear Financial or Foinaven when he followed up on his intention to transfer his pension, on 27 July 2017, and in writing on 1 August 2017. Nestle Pensions sent the transfer questionnaire to Dr on 2 August 2017, however, even though Dr D was aware of the guarantee date, he did not complete the transfer questionnaire until 5 August 2017, after the guarantee had expired.
23. I realise that Nestle Pensions only clarified its further requirements for the transfer to proceed on 1 August 2017, leaving very little time for this information to be submitted. However, Nestle Pensions were only given seven working days to follow up on Dr D's intention to transfer, and it did so within a reasonable period of time. It was not until

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11 September 2017 that Nestle Pensions could have acted, therefore it could not have transferred Dr D's benefits to Nucleus before this date.

24. In regard to Nestle Pensions' statement that a transfer will usually take between eight and sixteen weeks to complete, that refers to the whole transfer process. If Nestle Pensions had received all the necessary paperwork before the expiry date, it would be obligated to pay the CETV. However, as it was not provided with all the required documentation from Dr D, it was obliged to recalculate his CETV.
25. Therefore, I do not uphold Dr D's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
25 October 2018