

Ombudsman's Determination

Applicant	Ms S
Scheme	Trinity Retirement Benefit Scheme (the Scheme)
Respondent	Trinity Retirement Benefit Scheme Limited (the Trustee)

Outcome

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

Complaint summary

3. Ms S has complained because she considers the Trustee failed in its duty of care to her, as it did not inform her of the reduced cash equivalent transfer value (**CETV**) of her ex-husband's pension, prior to the finalisation of the pension sharing order (**PSO**).

Background information, including submissions from the parties

4. Ms S' ex-husband was a member of the Scheme and as part of their divorce settlement, Ms S received 100% of Mr S' pension, in the Scheme, through a PSO.
5. On 27 February 2017, Mr S wrote to the Trustee and requested an up to date CETV of his benefits. He explained that he was going through divorce proceedings and, he needed to provide this information. On 9 March 2017, the Trustee wrote to Mr S and informed him that the CETV of his benefits was £74,319.66, at that date. The letter did not say that the CETV was only valid for three months. However, it did say that the "Trustee reserves the right to reduce the transfer value in accordance with Transfer Regulations or on actuarial advice. Should this be necessary, you will be informed at the time of the calculation being carried out."
6. The letter also said "If a Court Order is made, the Trustee must implement it within four months. However, this period will not commence until (i) the enclosed form has been completed by you and returned to us with a copy of the Court Order..."
7. In June 2017, the Trustee wrote to Mr and Ms S separately and informed them of its requirements to implement the PSO.

8. On 1 July 2017, following advice from the Scheme's actuary, the Trustee changed the calculation basis on which CETVs were calculated. This resulted in Mr S' CETV being reduced to £59,692.45.
9. The PSO was granted on 13 September 2017 and it came into effect 21 days after. The PSO created a pension sharing charge over 100% of the pension scheme asset for the purpose of s.29(1) of the Welfare Reform and Pensions (NI) Order 1999, and stated that the charge shall be apportioned 100% to Ms S. It stated:
 - "To the person responsible for the Pension arrangement:
Take notice that you must discharge your liability within 4 months beginning with the first day on which the order or provision takes effect or, if later, with the first day on which the person responsible for the Pension arrangement is in receipt of –
 - (a) the order of ancillary relief, including the annexe;
 - (b) the decree of divorce or nullity of marriage and;the information prescribed by Regulation 5 of the Pensions on Divorce etc. (Provision of information) Regulations (Northern Ireland) 2000."
10. The Trustee received a copy of the PSO on 4 October 2017. On 27 October the complainant paid the implementation fee. The Trustee wrote to Ms S on 10 November 2017, to inform her that the PSO had been implemented and that it would shortly make a payment in settlement of the order to Ms S' chosen pension arrangement.
11. On 15 November 2017, Ms S received a letter from the Trustee informing her of the amount that had been transferred to the receiving scheme, in accordance with the PSO.
12. Between 15 November and 1 December 2017 there was further correspondence between Ms S and the Trustee regarding the CETV that was transferred. This resulted in Ms S making a complaint to the Trustee, through the Scheme's internal dispute resolution procedure (**IDRP**), as she felt the Trustee's failure to notify her of the reduction in the CETV, prior to the transfer, had resulted in her incurring a financial loss.
13. The Trustee responded to Ms S on 16 March 2018 but did not uphold her complaint. It explained that the CETV paid was less than the estimated CETV on 9 March 2017 because "it is reflective of the underfunding of the pension scheme pursuant to market conditions at the time of its calculation. The Trustee of the Scheme was guided by the Scheme Actuary that it was necessary to adopt alternative transfer value assumptions because the previous assumptions used... were unduly high and posed a funding threat to the Scheme."

14. The Trustee explained why it did not consider the court would have had a specific figure in mind, at the time that it granted the PSO. It said the PSO was expressed as a 100% share of Ms H's ex-husband's benefits and that share was allocated to Ms H by way of a transfer value to achieve a 'clean break.' The Trustee asserted that the court was unable to determine the final value of Ms H's transfer value at the time it granted the PSO. Additionally, all transfer values are reflective of the market conditions at the time they are estimated and then again when they are put into payment or implemented.
15. The Trustee said that the court was not in a position to know or understand the funding of the Scheme at the time the PSO was granted, nor the assumptions that made up the calculation of the transfer value. It also explained why the CETV quoted in March 2017 was not guaranteed. The Trustee explained that, at the time the assumptions for the calculation of the CETVs were changed, it did not owe her a duty to inform her of the change. This is because her ex-husband was still a member of the Scheme at that time. Therefore, any duty owed would have been to him.
16. The Trustee explained that it had received the PSO on 4 October 2017 and it was at that point that its duty to Ms S, as a beneficiary, commenced. Therefore, the Trustee concluded that its administrator processed Ms S' case in accordance with the governing legislation, the Rules of the Scheme and the Trustee's internal policies. Therefore, it could not honour the original estimated CETV.
17. Dissatisfied with the Trustee's response Ms S referred her complaint to this Office and made the following points:-
 - In the course of her divorce proceedings, when the terms of the PSO was being agreed, the court took into account, not only this CETV but other pensions and non-pensionable assets.
 - While the pension share in relation to this arrangement was a percentage, rather than a value, that percentage was determined with a view to achieving an outcome whereby the pension share along with any other assets awarded to her, would provide her with a fair proportion of her ex-husband's overall wealth.
 - After the transfer was completed she was informed that a new calculation basis had been adopted that resulted in a significant reduction in the transfer value. She is not certain that the Trustee were entitled to arbitrarily reduce the transfer value as it does not appear to have obtained an insufficiency report, to which the Occupational Pensions Schemes (Transfer Values) Regulations 1996 (**the 1996 Regulations**) refer.
 - The Trustee also failed to make any reference to an apparent three month guarantee period on the initial value although subsequent correspondence had not been consistent on this issue.

- Even if the recalculation were legitimate, the Trustee failed to notify her of the recalculation even though its previous correspondence said that it would. The Trustee started communicating with her directly on 14 June 2017, so it seems inaccurate for the Trustee to claim it could not have told her about the change to the calculation basis, which was implemented on 1 July 2017.
 - Notification would have given her the opportunity to seek a variation of the share other assets to compensate for the unexpected reduction in the CETV. She was not informed of the reduction until after the transfer was made.
 - The failure to inform her of the reduction has resulted in her incurring a financial loss equal to the difference between the amount of the transfer credit and the March estimate.
18. In response to Ms S' complaint, the Trustee gave a background of the events that led to the complaint and made the following comments:-
- The March quote made it very clear that the transfer value being quoted was calculated as at 9 March 2017 and was subject to change due to reduction or market factors.
 - The point was reiterated stating that the Trustee reserved the right to change the transfer value on actuarial advice. If the transfer value were to change, the Trustee explained that the member would be told at the time of the calculation being carried out.
 - It is difficult to see how the Trustee could better signal that the transfer values quoted were liable to change.
 - The Trustee's duty was to Ms S' ex-spouse as he was the member of the Scheme and not Ms S. The Trustee owed no duty of care towards Ms S.
 - Although the transfer value calculations took into account changes in market conditions on a monthly basis, they had not been formally reviewed since 2015. Following the appointment of the new Scheme actuary in December 2016, the Trustee asked the Scheme actuary to formally review the CETV calculation.
 - At a Trustee's meeting on 5 June 2017, the Trustee considered advice on the CETV assumptions, from the new Scheme actuary. The Scheme's actuary's advice was that the calculation basis was creating a funding strain on the Scheme, arising from members taking transfer of their benefits. Additionally, there was prudence in a number of the assumptions used, thereby inflating the transfer values over best estimate/statutory minimum.
 - The Trustee agreed to the proposed amendments to the assumptions which reduced the level of prudence used and thereby reduced the transfer values.

- The Trustee did not have to complete an insufficiency report because the transfer values were not reduced to reflect scheme underfunding. The underlying assumptions used in calculating transfer values were simply recalibrated to a best estimate basis to protect the funding of the Scheme.

19. In response to the Trustee's comments, Ms H made the following points:-

- It is understood that the provisions relating to transfer value guarantees and PSOs are essentially incompatible. Unless Trustee are required to implement a PSO before the transfer value guarantee expires, in reality there is no guarantee.
- As the PSO implementation period is four months and the CETV guarantee is three months, there can never be any guarantee that a CETV placed before the courts would be the value awarded at implementation.
- In her opinion, this is grossly unfair, but it does not prevent Trustee from exercising their discretion in some cases where the transfer changes have a significant impact.
- She understands the reasons for the changes made to the calculation basis in July 2017, which the Trustee knew at an early stage would result in a lower CETV. She cannot see how the Trustee felt it unreasonable to warn her of the certainty of a reduction in the CETV recalculation. She had no indication of any changes until after the transfer was paid. By this time, she had already made an initial bid on a new home, having left the former marital home as part of the divorce settlement. As a result of the reduced CETV, the house purchase had to be abandoned.
- She understands there would naturally be those that benefit and those that lose. She would not dispute that she should be one of the latter if the Trustee had taken reasonable steps to inform her of the reduced CETV. This would have enabled her to consider alternative, remedial steps.
- She does not believe it could be considered reasonable to withhold warning of a certain CETV reduction for more than four months, during which time she was obviously making plans for a place to live. It was also not reasonable that no indication was given until after the transfer was settled.

Adjudicator's Opinion

20. 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 below:-

- The role of the Trustee is to administer the Scheme in accordance with the Rules that govern it. The Trustee has a duty of care to their members to ensure that it does not make any decisions that could put a member's benefits at risk. Additionally, the Trustee has a duty to inform members if the recalculation of their CETV results in a lower value than they were originally informed.

- Ms S' ex-husband was a member of the Scheme and, by virtue of the PSO, Ms S became entitled to the benefits within the Scheme. The Trustee changed the basis on which CETVs were calculated in July 2017, but the PSO was not implemented until 10 November 2017. Therefore, at the time that the calculation basis changed, the Trustee of the Scheme only had a duty to inform Ms S' ex-husband and not Ms S, as she was not yet entitled to any benefits from the Scheme.
- The Adjudicator noted that Ms S had said the Trustee had started communicating with her directly in June 2017. Therefore, it should have communicated to her directly, the reduced CETV, prior to the transfer.
- However, the correspondence the Trustee sent Ms S in June 2017 was a request for Ms S to provide information in relation to the PSO. The Trustee did not provide Ms S with any specific information regarding her ex-husband's benefits within the Scheme. Additionally, the letter informed Ms S that:

“Once we receive all of the relevant paperwork requested, we will be in a position to implement the pension sharing order and recalculate the transfer value.”

- Therefore, it was the Adjudicator's view that, Ms S was aware that the CETV of her ex-husband's pension would have had to have been recalculated, after the implementation of the PSO. Therefore, the value of his benefits, prior to the implementation of the PSO, was not guaranteed.
- In the Adjudicator's opinion, the Trustee did not owe Ms S a duty to inform her of any changes to her ex-husband's benefits within the Scheme, prior to the implementation of the PSO. Therefore, it was the Adjudicator's view that this complaint should not be upheld.

21. Ms S did not accept the Adjudicator's Opinion and in response made the following points:

- She understands the Adjudicator's point in relation to the Scheme Trustee's duty of care prior to the implementation of the PSO. However, the Trustee would have been aware of the PSO process and the significance of the information it provides to any party/all parties to the proceedings.
- She expects the Trustee to be aware that the CETV of pension benefits is part of a more complete financial calculation provided to the courts to assist in arriving at an agreed settlement. Therefore, if the calculations basis changed in a way that is expected to significantly impact the calculations provided to the courts, it seems reasonable that those impacted by the change should be informed as early as possible.
- This could have been by notifying the court via Mr S, through her or any other method. The key point is that there should be an opportunity for someone to communicate to the legal representatives and to the court, that a significant change

had occurred, that was likely to have an impact on the previous information provided to the court and consequently, on the terms of the PSO settlement that was being made.

- There was no such communication to her, or to her knowledge to Mr S or directly to the court. It remains the case, to her knowledge that no one was informed of any change prior to the conclusion of the PSO or prior to the settlement. Therefore, the opportunity for the Court to review the PSO terms was missed.
- The Adjudicator made the point that the PSO was not implemented until 10 November 2017. However, according to the Trustee's IRDP letter of 16 March 2018, the Scheme received the PSO from the court on 4 October 2017. At that point the Trustee had yet another opportunity to inform her of the significantly reduced calculation basis (even before performing the calculation itself). However, it did not do so.
- When the recalculation was done, prior to the completion of the transfer, she was still not informed of the reduction. The transfer was settled on 27 October 2017 and on 15 November 2017 she received a letter informing her of the reduction.
- The Adjudicator failed to comment on the Scheme's entitlement to significantly reduce the CETV calculation basis in the absence of a scheme insufficiency report. Nor did the Adjudicator comment on the Trustee's remark that the previously calculated CETV was 'unduly high'. This appears to be an arbitrary and imprecise assessment.

22. The complaint was passed to me to consider. 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

23. A PSO sets out how much of an ex-partner's pension, an individual is entitled to receive. The amount is usually expressed as a percentage of the transfer value and not a specific figure as transfer values can increase or decrease over time.
24. In this case, the PSO awarded Ms S 100% of the value of her ex-husband's pension within the Scheme. The PSO did not say that a specific amount needed to be transferred. I find that the Trustee complied with the PSO when it transferred 100% of the value of Ms S' ex-husband's pension to Ms S' personal pension arrangement.
25. Additionally, the 9 March 2017 letter showing the CETV value of Mr S' benefits did not imply that the benefit amount was fixed. It was a quote like any other. It did not create a freestanding entitlement to the amount stated on its face as the quote was not contractually binding.
26. I understand Ms S' disappointment that the value of her ex-husband's pension had reduced prior to the transfer. However, I am unable to conclude that this has resulted

in an actual financial loss to Ms S. Actual financial loss can only flow from the consequences of any reasonable reliance on information which was provided. The 9 March 2017 quote the Trustee sent to Mr S informed him that the Trustee reserved the right to reduce the transfer value in accordance with Transfer Regulations or on actuarial advice. The Trustee made no representation to Ms S about the transfer value upon which it was reasonably foreseeable that she would rely. I do not find it was reasonable for Ms S to have relied on the value of the CETV stated in the 9 March 2017 quote, to make a decision to buy a house.

27. The decision to buy a house could only reasonably be taken once the Trustee had told her the value at which they would settle the PSO. This is consistent with the June 2017 letter the Trustee sent to Ms S, in which it informed her that the CETV would have to be recalculated, once all the relevant paperwork was received to implement the PSO.
28. Turning to whether the Trustee had the right to reduce the CETV at all, I find that they did. The 1996 Regulations require CETVs to be calculated on an actuarial basis reflecting the amount which is required to make provision within the scheme for a member's accrued benefits, options and discretionary benefits. The Trustee must determine the extent of any options a member has, which would increase the value of their benefits under the scheme and any adjustments they decide to make to reflect the proportion of members likely to exercise those options.
29. The Trustee is legally required to monitor and review the appropriateness of the assumptions and actuarial factors used in the calculation of CETVs. This is not limited to just the interest rates, age and life expectancy factors. For example, another consideration could be the possibility of an increase in transfer value requests due to changes in legislation, where it is thought that the calculation of transfer values on the existing basis would mean members would be paid transfer values that are too high and detrimental to members who remain in the Scheme.
30. I accept that the CETV issued on 9 March 2017 was higher than the figure that was transferred in November 2017. However, the Trustee has a duty to take into account the financial interests of all Scheme members, including members who continue to remain in the Scheme. Ultimately, it is a matter for the Trustee to decide, based on the Scheme's actuary's advice and recommendation, how the Scheme transfer values should be calculated.
31. The Trustee has previously explained, in its IDRPs response that an insufficiency report was not required as the CETV was not reduced because of the Scheme's underfunding. Therefore, I make no further comments on this point.
32. I have considered Ms S' point that the Trustees missed opportunities to tell her about the transfer value prior to complying with the terms of the PSO. I agree with the submission of the Trustee that they were under no duty to Ms S prior to being notified of the PSO creating a charge in her favour. I have therefore considered whether Ms S was likely to have acted differently if the Trustees had informed her of the transfer

value after 4 October 2017, at the point where they needed to obtain her consent. Even if Ms S had withheld consent to the transfer at that point, the Trustees would have been bound to implement the 100% share in her favour and, for the reasons I have set out above, would still have been under no obligation to honour the March quotation. I appreciate the logic that had she known the revised figure, Ms S could have applied to vary the global terms of the divorce settlement, but I have no evidence from which I can conclude that this was likely to have occurred or that it would have resulted in her receiving an increased share of some other asset.

33. To conclude, I understand Ms S' disappointment that the value of the pension she was entitled to, through the PSO, was reduced. However, I do not find that she has incurred a financial loss because of any maladministration by the Trustee. I understand why Ms S considers that it would have been better if the Trustees had told her how much she was entitled to before effecting the transfer, but I have no evidence from which I can conclude that the Trustee practice constitutes maladministration. I find that the Trustee adhered to the PSO when it transferred 100% of Mr S' benefits within the Scheme, to Ms S' personal pension arrangement.
34. Therefore, I do not uphold Ms S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
29 March 2019