

Ombudsman's Determination

Applicant	Mr Y
Scheme	Simon Group Pension Fund (the Fund)
Respondents	Trustee of the Simon Group Pension Fund (the Trustee) Barnett Waddingham LLP (BW)

Complaint Summary

1. Mr Y has complained about the following:
 - the delays caused by BW and the Trustee when reviewing his transfer request, which included 'excessive' and 'erroneous' questions for due diligence;
 - the Trustee's decision to decline his transfer request to an overseas pension scheme, on the basis that it could not be satisfied that the receiving scheme was a Qualifying Recognised Overseas Pension Scheme (**QROPS**);
 - the Trustee's offer to continue with further due diligence only if he covered the costs this incurred;
 - how BW would not provide a forecast of his benefits, thereby forcing him to transfer out of the Fund; and
 - the level of service he received from BW and the Trustee relating to his information requests, and the responses he received.
2. As a result, Mr Y claims that he:
 - was unable to retire as he did not have access to his funds;
 - incurred additional costs resulting from having to transfer to a UK-based defined contribution pension scheme (**UK DCPS**);
 - suffered an investment loss; and
 - suffered distress and inconvenience.

Summary of the Ombudsman's Determination and reasons

3. The complaint is partly upheld for the following reasons:-
 - The Trustee took into account irrelevant factors when it decided to decline Mr Y's transfer request and did not explain the reasons for its refusal in a clear and consistent manner.
 - It inappropriately asked Mr Y to cover the costs of further due diligence, even though it did not believe further due diligence would likely address whether the receiving scheme would qualify as a QROPS.
 - BW caused delays when reviewing the information submitted for Mr Y's transfer request.
 - Certain aspects of the service Mr Y received from BW and the Trustee were unacceptable.
4. As a result, the Trustee shall provide redress to Mr Y in accordance with the Directions set out in paragraphs 95 to 99 below.

Detailed Determination

Material facts

5. In 2017, Mr Y was considering consolidating his three UK-based pensions. At the time, he was a deferred member of the Fund, which is an occupational defined benefit pension scheme.
6. Mr Y asked BW, the administrator of the Fund, for an estimated forecast of probable future pension at some point in 2017. Mr Y has said that BW replied, explaining that it would only provide a guaranteed pension statement at the time of leaving the Fund. So, he subsequently asked for a cash equivalent transfer value (**CETV**) quotation in December 2017.
7. On 20 December 2017, BW issued a CETV Quotation (**the 2017 Quotation**) for £69,642.74, which had a guarantee end date of 20 March 2018. It also provided the following information:

“The [Trustee] will need to check the validity of the instructions which may, in some circumstances, require the submission of additional information [...] Further details of the requirements will be provided if this is the case. [...] Please let [BW] know immediately if it is intended to transfer to an overseas arrangement. An Overseas Transfer Charge of 25% will be deducted from the transfer payment unless one of the specified exemptions applies. Further information and alternative forms can be provided on request.”
8. On 1 February 2018, Mr Y’s independent financial adviser (**IFA**) contacted BW regarding the pension details as the figures provided were calculated based on date of leaving. The IFA thought this was misleading and that BW should have provided the current value of Mr Y’s benefits. BW reconfirmed that the figures were as at date of leaving, as confirmed in the paperwork.
9. On 6 March 2018, the IFA submitted the required forms and information to BW.
10. After reviewing the required forms and information, BW contacted the receiving scheme, a personal pension scheme based in Jersey, on 16 March 2018. BW said that, as it had received forms for a transfer to a UK Pension Scheme whereas Mr Y wanted to transfer to a scheme in Jersey, it would need overseas forms completed. The receiving scheme asked if anything could be done as the guarantee expiry date was 20 March 2018.
11. Mr Y telephoned BW on the same day to ask for the overseas paperwork and if it could honour the CETV in the 2017 Quotation. BW advised that Mr Y’s request had not made clear that it was for an overseas transfer. It was not sure what could be done as it looked like there had been a miscommunication. BW said it would look into the matter and contact him.
12. On 19 March 2018, BW telephoned the receiving scheme to advise that the overseas transfer forms could be sent by email.

13. On 20 March 2018, the IFA and the receiving scheme returned the completed overseas forms to BW. The receiving scheme also provided a link to its scheme rules as well as a number of Trust Instrument documents.
14. After sending in the outstanding member's copy of the transfer advice declaration the IFA telephoned, on 9 April 2018, to see if the CETV from the 2017 Quotation had been secured. BW confirmed that it had been as all the relevant documents had been received in time for the March 2018 cut off. It said that it would be doing the transfer checks that week.
15. BW subsequently wrote to Mr Y, on 16 April 2018, as the IFA had crossed out part of the declaration on the transfer forms; namely, a sentence about complying with the FCA requirements in relation to delivering advice as well as a sentence about recommending whether its client should transfer to the receiving scheme. BW explained that it required a disclaimer to be read, an acknowledgement to be signed and dated, and then returned to allow it to continue with the transfer.
16. On 18 April 2018, Mr Y returned the acknowledgement.
17. On 2 May 2018, BW wrote to Mr Y in relation to the overseas transfer charge. It asked him to provide written confirmation from a qualified accountant or solicitor in his country of residence. BW also wrote to the receiving scheme as it needed confirmation regarding:
 - the name any cheque should be made payable to;
 - the receiving scheme being in a territory where the pension scheme was open to residents in that territory;
 - the receiving scheme's treatment of taxation and tax relief;
 - the receiving scheme's definition of ill-health;
 - whether members were unable to access benefits before age 55 in the receiving scheme except in the case of ill-health; and
 - why there were pages missing from the Declaration of Trust made on 15 April 2008, which had established the "retirement annuity trust scheme" that Mr Y wanted to transfer into.
18. On 10 May 2018, the receiving scheme said that the Declaration of Trust was an extract as it did not provide full documents. It said that the information required to complete HM Revenue & Customs' (**HMRC**) checks had been provided in its previous letter that had enclosed the transfer documents. It asked why BW required proof of Mr Y's residency and requested whether it could provide BW with an address verification to show that Mr Y was a resident in Jersey.
19. On 14 May 2018, BW received a letter from a chartered accountant, that confirmed Mr Y's residency.

20. On 25 May 2018, BW contacted the receiving scheme to ask for a full copy of the Declaration of Trust made on 15 April 2008. The receiving scheme responded on 29 May 2018, saying that this was an unusual request and that it had never provided its Trust Deed to another scheme in the past. It asked if there was anything in particular that BW needed to see from the Trust Deed and queried where the legislative requirement was that stated that a pension scheme had to provide its full Trust Deed.
21. On 14 June 2018, BW asked the receiving scheme for a number of extracts in relation to the Trust Deed, a schedule to information notice, HMRC's acknowledgement of the Pension Age Test Declaration and APSS240 undertaking. The receiving scheme emailed these the same day.
22. On 18 June 2018, Mr Y wrote to BW to say that he had carefully considered the scheme, and both realised and accepted the risks associated with it. He said that he was losing patience with the length of time the transfer process was taking and wanted advice on how to expedite the transfer, in addition to details of what was causing the delay.
23. BW responded the same day, saying that the case was with the Trustee for its approval. The time taken was as a result of the checks carried out for Mr Y's protection as well as the Fund's, as the Trustee needed to determine whether the receiving scheme was a QROPS. Mr Y replied a day later to say that he was surprised by this as he had already transferred two pensions to the receiving scheme, which were done relatively quickly without any tax liabilities or sanction charges. He also mentioned that Jersey had a full back to back tax arrangement with the UK to avoid double taxation, which he thought was what the QROPS system was for. He said that the receiving scheme was with a well-established international company that dealt with HMRC on a regular basis.
24. On 26 June 2018, Mr Y emailed BW to see if his funds had been transferred. BW responded to say that his funds had not been transferred as it was waiting for the Trustee to advise whether or not the transfer could be paid.
25. On 29 June 2018, Mr Y asked for an update, as he said BW's response of 'waiting for the Trustee to advise' was no longer acceptable. He submitted a formal complaint about the time taken for BW to transfer his benefits, as it had everything required to arrange the transfer. He said he expected the transfer to be executed within the next five days, otherwise, he would be taking the matter to The Pensions Regulator (**TPR**) and my Office.
26. Mr Y subsequently emailed BW to provide information on how QROPS worked in Jersey, as he was a pension trustee of a fund based in Jersey. He reiterated that he had managed to transfer to the receiving scheme and there was no issue with HMRC not recognising them as a QROPS. He said that the only decision the Trustee should have to make was whether or not BW/the Trustee had exercised reasonable due diligence with regards to the transfer. He claimed that if this had not been achieved by this point, then it could only be a question of competence on the part of BW.

Nevertheless, he recognised that Jersey was a special case in a lot of legal circumstances and so appreciated the extra care and attention that had been taken. He said he had copied in his pensions adviser in case BW needed any further advice on how QROPS worked.

27. BW responded the same day, saying that the checks carried out were standard and performed on all overseas transfers to ensure the Trustee had all the information required to make an informed decision. BW said that the Trustee would be discussing Mr Y's transfer request at the Trustee meeting scheduled for 17 July 2018.
28. On 3 July 2018, Mr Y replied to say that with the QROPS in Jersey, a lot of the checks for other jurisdictions were not required and BW's insistence on carrying them out had slowed the process down and continued to cause him consequential losses. He thought that by allowing him to transfer, it would reduce the future risk and liabilities of the Fund. However, he would put his complaint on hold as BW had informed him of the decision date.
29. On 18 July 2018, Mr Y telephoned BW. BW emailed in response saying it had not heard from the Trustee yet. Mr Y then emailed asking to be copied into any 'open emails' and said that the Fund secretary should be able to inform BW of the outcome of the meeting, that his transfer would be on the open minutes of the meeting, which he was entitled to see. If, however, the information was not forthcoming, Mr Y asked for the Trustee's contact details.
30. BW replied to say that it appreciated Mr Y's frustration and that it was arranging for the Board Minutes from the Trustee meeting on 17 July 2018 (**the Board Minutes**) to be typed up and approved before giving its response to member queries. It said that this was anticipated to be done during the course of the next day.
31. On 19 July 2018, BW provided Mr Y with the email address he requested for him to submit his complaint and explained that he would need to send a hard copy as well. It emailed the same day to say that the Trustee had determined not to approve the transfer request. It said:

"The Trustee had endeavoured to carry out due diligence that would satisfy it that the transfer could be approved, but this has not been conclusive in the context of HMRC rules. As it stands, despite extensive due diligence, the risk of a sanction for the [Fund] means the transfer cannot be approved. The Trustee considers that the further due diligence required would be disproportionate in time and cost given the position on HRMC rules will not be altered by such an exercise. The Trustee is prepared to reconsider this matter if [Mr Y] wishes to bear the cost of further due diligence including the fees of the Trustee's legal adviser."
32. Mr Y telephoned BW the same day to say that he was "utterly disgusted at this farce", that he would be contacting BW on a regular basis and that he would be taking legal action. A day later, Mr Y informed BW that he wished to transfer his pension to a UK DCPS and asked how long it would take. BW confirmed that an additional CETV

would cost £300 plus VAT. On receipt of this, the CETV could be produced within 10 working days.

33. At some point, Mr Y asked if the CETV fees could be waived. He explained how he suffered from a number of stress-related illnesses which is why he had intended to be retired by this point. He had limited funds and needed to transfer his funds offshore to enable him to retire on a workable pension. He believed that, as a result of his experience with the Trustee and its stance, his stress caused him some recent health problems. He said that the Trustee had admitted it had failed in its own due diligence, despite full cooperation by him and the receiving scheme. So, he now found himself in the “absurd position” of having to transfer his funds twice with all the costs that involved.
34. Mr Y formally complained to BW on 24 July 2018, about the following:
- BW’s refusal to give an estimate forecast;
 - the inappropriate length of time to decide his transfer request and the subsequent consequential losses;
 - the inappropriate extent of information asked for, which he wanted justified;
 - the continual requests for irrelevant information;
 - the failure to complete due diligence;
 - the refusal to continue with further due diligence;
 - its offer to continue subject to him paying the costs; and
 - the fact that the reason of ‘the risk of sanction to the Fund’ was not acceptable or valid. He said it was the Trustee’s duty to reduce the risk through due diligence and by having a robust, well managed scheme. If the Trustee had not completed the due diligence despite having accepted all the documentation, and was refusing to continue without payment, then competence or the integrity of the Trustee must be called into question.
35. On 26 July 2018, BW advised Mr Y that he could get another free CETV quotation on 7 December 2018. It also said that it always provided members with details of their deferred pension at date of leaving and information about how their pension was revalued in deferment to the date of retirement. BW would not make predictions on the levels of future revaluation, but the information provided to the member allowed them to calculate their own prediction. It attached a copy of the Fund booklet to its email.
36. A day later, Mr Y confirmed that he had paid the fees for a second CETV quotation and that he wanted to proceed with the transfer to the UK DCPS he had selected.
37. On 8 August 2018, BW issued the CETV Quotation for £73,930.89 and, on the same day, the UK DCPS sent information to BW.

38. On 9 August 2018, Mr Y contacted BW about how the number of permanent trustees of the Fund had reduced and only three were now directors of the Fund, two of whom resided outside of the UK. Mr Y thought this was an “extraordinary” way to run a UK pension scheme. He asked if there were any lay trustees and, if so, whether he could have their contact details. BW emailed Mr Y on 13 August 2018 to say that the Trustee would address the additional points of his complaint as part of its response.
39. On 11 September 2018, the Trustee issued its response, in which it did not uphold the complaint. It said, in summary:-
- Mr Y had a statutory right to request a ‘free’ transfer value in any 12 month period but during that period, he would not be able to ask for another transfer value without incurring a charge. Further, a transfer value only lasted for six months, after which it would need to be recalculated.
 - BW does not provide current valuations as revaluation rates change with effect from 1 January each year, but the entitlement is determined by complete 12 month periods. So, it was not possible to provide precise values without anomalies showing when comparing illustrations at different rates.
 - With regard to the time taken, it noted that Mr Y did not initially ask for the correct forms. Following this, the due diligence took three months and it believed the delays were caused as information was not provided when BW asked for it. After this, the next board meeting was on 17 July 2018. This was standard procedure and ensured that decisions were taken at the appropriate level. It did not think there was an inappropriate amount of time taken.
 - It thought the information asked for was proportionate and that asking for Trust Deed information was “standard due diligence”. However, in this case, it had not been possible to be “sufficiently certain” that HMRC would not levy a sanction in the future.
 - It did not consider it appropriate to carry out further due diligence as it had to act in the best interests of all members and must consider the “disproportionate expenditure of administrative expense on any one member.” It explained that the Fund was in deficit and so it should not risk the financial position of the Fund where it could not be satisfied that it would not be at risk of a sanction. It did not believe that further due diligence would reduce that risk.
 - It offered to consider further due diligence, including legal advice, if Mr Y paid for this. Otherwise, it considered that it would not be appropriate for it to incur further expenditure.
 - The Trustee of the Fund was a company, managed by three directors including a member-nominated Trustee. It believed the composition was entirely in accordance with UK pensions law.

- The financial position of the Fund had been public for a number of years. The strength of the Fund had improved considerably over the past eight years meaning that the deficit had been significantly reduced.

40. Mr Y emailed BW to submit a further complaint on 18 September 2018, in which he asked for the Trustee's email address. In summary, he said:-

- He asked whether the additional CETV quotation charge could be waived as a gesture of goodwill because of the time taken.
- He had been told that an estimated forecast of future pension was a member's right. The statement had to contain the benefits that a member would receive if he worked to his normal retirement date. Despite providing a valuation based on the date of leaving, it did not give the Fund administrator the right to refuse an estimate of probable future pension. So, he believed that the Trustee and BW had not acted within the legal framework and that they had denied him the opportunity to plan his retirement and had not treated him fairly.
- He had originally asked for a CETV quotation on 7 December 2017 and he did not get a decision on his transfer request until 17 July 2018, so he did not consider this a timely decision. He believed that BW should have realised it was an overseas transfer as both he and the receiving scheme had informed it of this. Further, the 'incomplete information' had not been asked for from the start. Rather, BW had "drip fed" requests, which had included a request for information that was sensitive and intellectual copyright. Despite the receiving scheme questioning the need for this information and receiving no response, it had sent the information anyway as it had deemed it in his best interests.
- The receiving scheme had reported that it did not receive the member's advice declaration, this was because BW did not send it. He was not sure how the delays were the receiving scheme's when BW did not send the correct overseas forms, which had been asked for, or clear initial instructions. He believed this demonstrated a lack of responsibility within an organisation that had "little or no regard for its members".
- He questioned how the due diligence had been completed when the email, dated 19 July 2018, said that further due diligence was required but deemed disproportionate. He did not believe he should have been asked to pay the Trustee to do a task that was part of its responsibility. He also questioned whether it understood or had researched international tax regulations. He emphasised that it was the Trustee's duty to make an informed decision on the transfer request. By having incomplete due diligence, the Trustee had effectively decided that the pension transfer and his retirement were not worth its time. So, it had not fulfilled its obligations and commitments.
- Had it done the due diligence required, it would have found out that Jersey had a "back to back tax regulatory system agreed with HMRC for a number of years and

in particular to pensions, it is known as TIEA (Tax Information Exchange Agreement).”

- He did not think he needed to get a letter from an accountant to prove his residency in Jersey and that this demonstrated a “complete lack of understanding.” Jersey is not its own country but has separate jurisdiction.
- BW and the Trustee had not provided a reason why it was not appropriate to carry out further due diligence. It was the Trustee’s duty to release the funds, if appropriate to do so, by completing the due diligence. The administration cost of doing this will vary from member to member depending on their circumstances, but the individual rights of the member should not vary from member to member. He questioned just how disproportionate the cost of further due diligence and legal advice was.
- He did not agree that the movement of funds was subject to the Trustee’s approval. Rather, the Trustee needed to decide if it was liable for tax under HMRC guidelines through due diligence, which should be completed by BW or the Trustee, depending on the circumstances.
- He disagreed with the reporting of underfunding. He did not think he had been receiving statements and also could not see in the annual report that underfunding had been mentioned.
- The Trustee and BW had not provided him with the membership booklet or Board Minutes that he had requested.

41. On 24 September 2018, the Trustee responded. It said that, as it was responsible for all aspects of the Fund, BW would not be sending a separate response. It responded to Mr Y’s points as follows:-

- With regard to the projection of benefits at Normal Retirement Date, this could be provided. The wording in the projection is caveated to advise that assumptions had been made and that the value was not guaranteed. At the time, BW understood that Mr Y wanted a current revalued pension figure, which was something it avoided doing as the methods for calculating these valuations could cause large anomalies.
- The Fund had been in deficit and there were limited resources available to incur expense that it considered disproportionate to the outcome. The assets of the Fund were not something that the Trustee could draw on at will for non-essential discretionary expenses, rather they were to pay members’ benefits.
- The same due diligence was conducted for any transfer out but the requirement for overseas transfers were far more onerous, took more time and represented added risk to the Fund, given the change in HMRC consequences.

42. On 26 September 2018, Mr Y emailed the Trustee to say that his IFA had asked BW if it could provide Mr Y with any further information, other than the guaranteed figures based on the date of leaving, that would help him estimate what he was likely to get when he retired. The response had been that further information could not be provided, and no further offer of help or information was given. In the same email, Mr Y questioned why the Trustee had asked for further money to reconsider his transfer request when it “already understood the legal position”, and he wanted to know what was disproportionate about the figures involved? He asked whether the Fund had a standard process for overseas transfers such as a blanket rejection, in which case he believed he should have been informed beforehand.
43. It does not appear that the Trustee responded to this email.
44. On 3 October 2018, Mr Y wrote to BW to say that, with the Trustee taking so long to reply to his complaints, HMRC had now changed its rules for transfer value analysis (**TVAS**) reports, so he was not going to proceed with the 8 August 2018 CETV Quotation, but would wait for 8 December 2018 for a new CETV Quotation.
45. On 21 December 2018, BW emailed the IFA to say that it would issue a CETV Quotation as soon as possible, but, due to legal developments, it was liaising with the Trustee on a technical matter in relation to the Fund benefits. As this could have an impact on the quotation, it said there may be a delay but that the new CETV Quotation would be provided within the statutory timescales. It confirmed that the technical issue related to contracted out benefits before April 1997.
46. On 14 January 2019, BW issued the CETV Quotation, which quoted a figure of £75,586.27. The funds were subsequently transferred to a UK DCPS on 14 March 2019.
47. At a later date, Mr Y transferred his benefits from the UK DCPS to the Jersey-based receiving scheme.

Summary of Mr Y’s position

48. BW had refused to offer an updated benefit statement that demonstrated his estimated future pension benefits and would only give an illustration of his guaranteed minimum pension. This made it impossible to predict his pension provision and forced him into transferring his benefits.
49. It should not have taken BW and the Trustee over six months to refuse his transfer request on the basis of the amount of due diligence required. This was despite the “excessive amount” of information it had asked of the receiving scheme and BW’s “erroneous questions” for due diligence. He believed the Trustee’s statements about QROPS and HMRC were “ridiculous” and “unresearched”.
50. He questions the Trustee’s refusal to continue with the due diligence unless he paid for the additional, unspecified costs. He believes that it is a pension provider’s duty to carry out due diligence checks, and not the individual member’s fiscal responsibility.

51. He believes he has not received sufficient information from the Trustee and BW, and his request for the Board Minutes had been ignored, alongside his request for the Trustee's contact details. Overall, he believes there has been a lack of competence and professionalism from start to finish.
52. He claims that he was unable to retire as he could not access his funds. This in turn caused stress, loss of investment in the new pension scheme and a financial loss as a result of having to go through a third party provider to subsequently transfer to the personal pension scheme based in Jersey. As a result, he had to pay for additional TVAS reports and CETV Quotations. So, he wants an award to cover the financial and non-financial injustice caused.
53. He believes that the Trustee later said that it was its policy to refuse overseas transfers, meaning that he has paid for a TVAS report unnecessarily and has provided, alongside the receiving scheme, 60 to 70 pages of requested evidence to the Trustee for "no apparent reason".

Summary of the Trustee's and BW's position

54. BW did not provide an updated benefit statement to Mr Y's IFA as all of the information required could have been obtained from the previously provided documents, in particular the 2017 Quotation, which had included the benefit at date of leaving and how it revalued in deferment. BW made it clear that it was always happy to provide a retirement quotation or projection, these were both offered in December 2018, once it became clear that this was the information required.
55. Mr Y has not indicated which questions or elements of the due diligence were excessive or erroneous. However, the Trustee believes that the due diligence was proportionate and appropriate. It also believes that the due diligence process was carried out in a timely manner and done in accordance with industry standard, as well as the legal framework for considering such transfers. The Trustee is satisfied that the alleged delays to the process were caused by Mr Y and his advisers not providing information in response to requests in a timely way.
56. Following the conclusion of the due diligence, the Trustee was required to consider whether it should approve Mr Y's transfer request. To approve the transfer was a matter for the exercise of the Trustee's discretion, outlined in the Fund Rules 30.2 (see Appendix 1), based on the due diligence process, advice and other material considerations including: the interests of all the members; and the consequences of any decision for the administration of the Fund in general.
57. When the Trustee exercised its discretion, the Trustee was concerned with whether the transfer itself would be a 'recognised transfer'. If not, it would incur a tax liability for either the member or the Fund, as well as a penalty. It also took into account that Mr Y could achieve his aims by transferring out to a UK-based scheme. As this was an option, he was not prejudiced. It may have involved additional procedures for the

member, but the additional steps did not outweigh the implications of HMRC's QROPS rules.

58. The Trustee did not agree with Mr Y's comments regarding its competence and professionalism. The Trustee's consideration of the legal issues and comprehensive responses provided to Mr Y did not show lacking. The due diligence process was carried out to meet TPR's expectations in relation to protecting members.
59. The Trustee's comments in relation to QROPS and HMRC were accurate and based on HMRC's own guidance. Consequently, the Trustee's decision about Mr Y's transfer request was made on the same basis, as evidenced by the Board Minutes (see Appendix 2).
60. The Trustee had considered that, notwithstanding the material before it, the fact that HMRC would not guarantee that a scheme appearing on the list of ROPS was a QROPS meant that it would not approve the transfer. Nevertheless, it was still necessary for the due diligence to be carried out in relation to the transfer.
61. The Trustee did not consider that further due diligence was necessary as the issue was not the absence of supporting information. Rather, it was HMRC's own information on ROPS and QROPS. "Additional information gathering would not resolve this, although there was no further information that needed to be collated in any case."
62. The Trustee has not been provided with any information or evidence as to any financial loss suffered or issues relating to Mr Y's health. So, they cannot comment on those claims. In particular, the Trustee has not been provided with information evidencing why Mr Y was unable to retire as a result of its decision. It noted that Mr Y was not seeking ill health early retirement. In any case, Mr Y was not prevented from transferring to a UK DCPS, of which he had been informed.
63. Under the Fund's Internal Dispute Resolution Procedure, complaints are usually handled by BW first, followed by the Trustee. In this case, because Mr Y's complaint related principally to a decision by the Trustee, it was considered more appropriate that the complaint should be referred directly to the Trustee. It accepted that there was a delay in providing a response, but Mr Y still received a complaint response in a shorter timescale than if it had been dealt with by BW.
64. BW could not provide the Board Minutes immediately as they had not been approved by the Trustee. The Board Minutes were not approved until the next board meeting, which took place in October 2018. By this time, Mr Y had made his complaint.
65. The additional information requested regarding the receiving scheme's rules was because the receiving scheme had originally only sent a partial copy, alongside copies of variations made to the receiving scheme's rules, which had not been included. This made it difficult to confirm whether HMRC's requirements were met, so a full copy was requested. Even when this was later provided, the definition of ill health within the scheme was unclear. The reference to the 'ill health condition' may

have been to the term as it is defined in the Finance Act 2004, but this was not made explicit by the legal documents received.

66. The agreed service level agreements (**SLAs**) for transfer value quotations and responding to queries is 10 working days. When BW received the documentation from Mr Y, the IFA and the receiving scheme, it noticed that the member's form was missing. BW subsequently received this on 3 April 2018. After BW's technical team had reviewed the documents, BW issued a further form to Mr Y on 11 April 2018. to ensure he was best placed to make a fully informed decision.
67. During the course of my Office's investigation, the Trustee also confirmed the following:-
- It considered and knew that Mr Y was entitled to transfer out under the Pension Schemes Act 1993 (**PSA 1993**). Mr Y subsequently transferred out in accordance with the provisions of the PSA 1993, to a UK DCPS.
 - It notes that, notwithstanding the provisions of the PSA 1993, it is still expected to carry out the necessary due diligence in relation to any CETV and transfer to ensure that the receiving scheme meets the legal requirements.
 - The initial transfer request was to a pension scheme in Jersey, which was not a UK DCPS. The Trustee used its discretion to consider whether it would allow that transfer and had regard to the issues relating to HMRC's treatment of tax in relation to QROPS. These changes were previously the subject of legal action. It is because of the unclear HMRC consequences of the transfer to Jersey that the Trustee used its discretion to refuse that transfer. This did not impede on Mr Y's rights to transfer to a UK DCPS.

Conclusions

68. Mr Y has raised a number of concerns, so I shall address what I consider to be the main complaints in turn. Any other points have been considered, but as they do not impact my decision, they will not be directly commented on.

Administrative delays

69. Mr Y has argued that BW had been told that he was transferring overseas, so the relevant overseas transfer forms should have been provided. While this may have been the case, it was clear from the initial transfer forms that confirmation was required. Had Mr Y, the IFA or the receiving scheme reconfirmed or queried this requirement when they received the forms, BW would have been able to issue the relevant overseas transfer forms at an earlier date. Despite this, Mr Y still secured the CETV from the 2017 Quotation, so I cannot see that this negatively impacted the transfer request. However, I appreciate that this may have contributed towards the total length of time it took for the transfer request to be submitted and reviewed.

70. With regard to the missing information, I note Mr Y has claimed that BW did not send a copy of the 'Declaration of Regulated Independent Advice in relation to a Transfer Value' form. As this formed part of the transfer quotation, which was in a singular attachment sent to Mr Y, I find it unlikely that this particular page was omitted. A copy of this was available in the transfer pack copy provided to my Office, so I consider that it is more likely that this was overlooked by the IFA. Even if BW had omitted to include this document, it is a standard requirement for defined benefit pension scheme transfers of over £30,000. The IFA would have been aware of this and so could have queried this at the time it received the documents.
71. As a result, I do not hold BW responsible for any delays caused by this. I also find it reasonable that BW made Mr Y aware that the advice he had received from the IFA did not fully comply with the Financial Conduct Authority's rules. So, I cannot say that this caused an approximate two day undue delay.
72. Further, although Mr Y has complained about BW's request for proof of residency, this was clearly marked as a requirement on the transfer forms. Otherwise, BW would not have been able to apply the exemption from the overseas transfer charge. While I do not consider that BW has done anything wrong by asking for this information, it is my view that it should not have taken over a month to ask for it. I cannot see why BW could not have identified this as missing when it contacted Mr Y about the overseas transfer charge. Consequently, I consider this as an undue delay, which impacted when BW made its subsequent requests.

Due diligence

73. Mr Y has argued that BW's due diligence was excessive and erroneous. From what I have seen, this was in relation to its request for further information regarding ill health and a full copy of the receiving scheme's Declaration of Trust dated 15 April 2008. It is my understanding that this was to establish whether the receiving scheme's rules allowed Mr Y to access his benefits before reaching age 55, except in the case of ill health.
74. I appreciate that, as a result of this requirement, the transfer request could not progress from 2 May 2018 until 14 June 2018. During this time, the receiving scheme questioned the need for a full copy of the Declaration of Trust on 10 May 2018, and BW responded on 25 May 2018. Given that BW's SLAs for these queries was 10 working days, and it took 13 working days to respond, it only caused a delay of three working days in this instance.
75. I do not consider that this significantly impacted the transfer request, but Mr Y did not believe this information was necessary. Having reviewed the contents of the receiving scheme's initial submission in March 2018, I cannot say that BW's subsequent requests were unreasonable. It was trying to establish whether the receiving scheme's rules satisfied the legal requirements of a QROPS, which in turn could affect a trustee's decision in allowing an overseas transfer to take place.

76. The trustee of a ceding scheme is required to satisfy itself that the receiving scheme is a QROPS. If it does not, it is likely to incur charges and sanctions. So, by asking for further information to try and establish whether the receiving scheme was a QROPS, I cannot say that BW's actions amount to maladministration. Nevertheless, without the undue delay caused by BW identified in paragraph 72 above, I find that the Trustee had sufficient time to make a decision within six months of the 2017 Quotation.

Transfer refusal

77. A member's right to a statutory transfer is set out in the PSA 1993. Section 93 (see Appendix 3) outlines the conditions that the member must meet to qualify for a statutory transfer. Having reviewed these conditions, it is clear that Mr Y had a statutory right to transfer, which the Trustee accepts. By completing the relevant documentation and returning this to BW in March 2018, Mr Y triggered his statutory right.
78. By him doing so, the Trustee would need to determine whether the requirements of section 95 of the PSA 1993 (see Appendix 3) had been met. So, it had to decide whether the receiving scheme was a QROPS. If the Trustee decided that it was not, it must have reasons for doing so and may refuse the transfer on that basis.
79. In this instance, the Trustee has claimed that it completed its due diligence, but it was not possible to determine whether or not the receiving scheme was a QROPS. As a result, it has said it used its discretion under Scheme Rule 30.2 to decline the transfer request. Where there is an overriding right to a CETV, section 95(2)(d) of the PSA1993 and Regulation 12(5) of The Occupational Pension Schemes (Transfer Values) Regulations 1996 (see Appendix 4), permit a transfer to an overseas arrangement provided that, where the transferring scheme is an HMRC registered scheme, the receiving scheme is a QROPS. It is only if there was no right to a statutory transfer that a non-statutory transfer under the Scheme Rule 30.2 could be considered.
80. Nevertheless, while the Trustee should not have used its discretion, Scheme Rule 30.2 also has to meet the requirements of Regulation 12(5) by virtue of the Scheme Rules requiring that a transfer to an overseas scheme or arrangement must satisfy HMRC requirements. So, the refusal to allow Mr Y to transfer to the receiving scheme is for the same reason, whichever transfer route is used.
81. To be a QROPS, a scheme must meet various prescribed conditions. Among other points, these relate to the location in which it is established, the member's residency, how it is regulated, and the benefits it pays. The Trustee's refusal to allow the transfer was on the basis that it was not possible to determine whether the receiving scheme was a QROPS. It said that this was not because of the absence of supporting information from the receiving scheme but because "notwithstanding the material before it, the fact that HMRC would not guarantee that a scheme appearing on the list of ROPS was a QROPS meant that it could not approve the transfer".

82. The Trustee's decision, to refuse Mr Y's transfer request on the basis that it could not satisfy itself that there would not be any 'HMRC consequences', amounts to maladministration. While I accept that HMRC's ability to provide such a guarantee, and the potential tax consequences of such an action, add a greater degree of uncertainty to the Trustee's deliberations, this cannot be used to negate the member's right to transfer under overriding legislation.
83. It should also be noted that although Mr Y had the opportunity to transfer to a UK DCPS, this is irrelevant. This should not have been considered as a reason for the Trustee to refuse Mr Y's transfer request to the receiving scheme. Nor should the Trustee have suggested to carry out further due diligence at Mr Y's expense if it considered it had completed this. In particular, when it has said that further information would not have clarified HMRC's information on recognised overseas pension schemes and QROPS, which was its main reason for declining the transfer request.

Projected benefits

84. Mr Y has claimed that BW would not provide an illustration demonstrating the pension he would likely receive at his Normal Retirement Date. The Trustee has suggested that this was because the request came after the 2017 Quotation was issued and that the information being requested could have been obtained from that. However, Mr Y has claimed that this request pre-dated the 2017 Quotation.
85. I have not seen any evidence substantiating Mr Y's claim. Based on the information provided, it appears that the query was made in February 2018. I say this as it would have been unusual for the IFA to question why BW had provided Mr Y's benefit figures as at the date he became a deferred member, if BW had already said it could not provide current figures.
86. In its complaint response dated 11 September 2018, BW said that it did not provide current valuations. However, in response to the complaint brought to my Office, it said that it could have provided a projection had it been clear that this was the information Mr Y was seeking. Having reviewed the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (see Appendix 5), BW should have included the projected amount of Mr Y's benefits from the date these benefits were payable. This being the case, neither Mr Y nor his IFA should have been required to explicitly ask for this information.
87. I note that Mr Y has said that as a result of this, he was forced into transferring his benefits. I do not agree. Although, BW should have provided this information automatically, had the information been crucial the IFA could have requested this and Mr Y could have complained if not forthcoming. In addition, Mr Y has said that he had been contemplating consolidating his three UK-based pensions, so there was already a likelihood that Mr Y would have transferred anyway. As a result, I cannot say that BW's acts and/or omissions have solely caused Mr Y to transfer. Nevertheless, I

appreciate that the non-provision of the projected value of Mr Y's benefits at that time will have caused some distress and inconvenience.

Service

88. I appreciate that, as a result of the time taken to receive a decision on his transfer request, Mr Y may have been frustrated with the time taken by the Trustee to respond to his complaints. These were within what TPR considers to be a reasonable timeframe. So, I cannot say that the Trustee has acted in error. However, I note that there does not appear to be a response to Mr Y's correspondence dated 26 September 2018. At the very least, this should have been acknowledged.
89. With regard to the request for the Board Minutes, I appreciate that these had not been finalised at the time that Mr Y complained. Nevertheless, it does not appear that BW issued them to Mr Y once they had been finalised. As a result, this has added to Mr Y's frustration. In relation to his request for the Trustee's contact details, it is clear that Mr Y's communications were being passed to the Trustee. While I cannot see that this has caused any problems, BW should have responded to this request at the time.
90. Mr Y has also commented on how the Trustee is set up. He questions whether this is in accordance with UK pensions law. The Trustee has said that it is a corporate trustee, managed by three directors, one of whom was a member-nominated trustee. I can see that the Trustee has a UK address for its registered office, but two of the directors reside overseas. While Mr Y may have concerns about this, there is no requirement for the directors of a corporate trustee to be based in the UK. So, this does not amount to maladministration.

Injustice

91. Mr Y has claimed that, as a result of the time taken to reach the Trustee's decision and the decision itself, he was unable to retire as he could not access the funds. Had the transfer been accepted at that time, Mr Y would have only been age 52 and so would not have been able to access his funds. This is because the receiving scheme's rules do not allow benefits from UK tax relieved funds to be paid earlier than age 55 unless due to ill health. However, it is possible that Mr Y may have experienced a financial loss with regard to his investments, depending on whether the Trustee would have accepted the transfer request.
92. In addition, if the Trustee had decided that the receiving scheme was a QROPS and accepted the transfer request, Mr Y would not have incurred the costs of acquiring further CETV quotations, TVAS reports and/or financial advice in general.
93. Moreover, if the Trustee had accepted the transfer request, the CETV should have been paid within six months of the 2017 Quotation. The Trustees had all the information it required by 14 June 2018, meaning that it would have had to have reached a decision and paid the transfer within four working days. However, as identified in paragraph 72 above, BW caused an undue delay as it appears it

reviewed the documentation relating to Mr Y's transfer request in parts rather than as a whole. Consequently, if the Trustee had decided to transfer, this would have attracted interest due to the delay.

94. It is evident that this process has caused Mr Y considerable frustration and additional administrative work. The Trustee did not decide whether the receiving scheme was a QROPS, when it ought to have done and the reasons it provided to Mr Y for refusing his transfer request were unclear and confusing. As a result, I find that Mr Y has suffered serious distress and inconvenience.

Directions

95. Within 28 days of the date of my Determination, the Trustee shall:-

- (i) Pay £1,000 to Mr Y for the serious distress and inconvenience caused.
- (ii) Decide whether the receiving scheme is a QROPS and inform Mr Y of its decision. In making this decision, it should not take into account the possibility that HMRC might decide to withdraw QROPS status from the receiving scheme in the future, as this is irrelevant.

96. If the decision from (ii) is that the receiving scheme is not a QROPS and so the Trustee would have still denied the transfer request, it shall set out the basis for that conclusion. If Mr Y disagrees with the conclusion, he will have the opportunity to complain about this to the Trustee, with the option of bringing the complaint to my Office, should he remain dissatisfied with the Trustee's response.

97. If the decision from (ii) is that the receiving scheme is a QROPS and that the Trustee would have allowed the transfer, the Trustee shall:-

- (iii) Calculate the interest that ordinarily should be applied, in accordance with regulation 10 of The Occupational Pension Schemes (Transfer Values) Regulations 1996 (see Appendix 4), on the £69,642.74 from the 2017 Quotation, as a result of the decision and transfer delay. The relevant timeframe is between 20 December 2017 and 14 March 2019.
- (iv) If the calculation from (iii) plus £69,642.74 (**Figure A**) equates to more than £75,586.27, the Trustee shall transfer an amount equal to the difference between these figures to the receiving scheme, subject to paragraphs 98 and 99 below. Should the transfer incur any additional charges and/or sanctions, the Trustee shall pay the additional costs.
- (v) Inform Mr Y of the above and invite him to evidence any costs he believes he would not have incurred had the Trustee made this decision in July 2018. It shall also invite Mr Y to evidence what the investment performance of the £69,642.74 would have been from July 2018 to 14 March 2019.

98. If Mr Y provides satisfactory evidence within a reasonable timeframe, demonstrating that the investment performance would have resulted in a figure greater than the £75,586.27 he received in March 2019, the Trustee shall:-

- (vi) Cover the costs that Mr Y has unnecessarily incurred. In particular: the cost of the additional CETV quotations issued; the cost of the additional TVAS reports; and any additional IFA or transfer fees from July 2018 to the date when he transferred from the UK DCPS to the receiving scheme.
- (vii) Transfer an amount equal to the difference between £75,586.27 and the investment figure to the receiving scheme within 28 days of receiving the evidence. Should the transfer incur any additional charges and/or sanctions, the Trustee shall pay the additional costs.

99. Should the evidence provided by Mr Y demonstrate that the investment performance would have resulted in a lower figure (**Figure B**) than the £75,586.27 he received in March 2019, the Trustee shall:-

- (viii) Offset the interest calculated in (iii), if Figure A is higher than £75,586.27, and any of the costs that Mr Y has unnecessarily incurred, against the difference between Figure B and £75,586.27.

If the difference between Figure B and £75,586.27 is offset by the interest calculated in (iii), should Figure A be higher than £75,586.27, and only some of the costs that Mr Y has unnecessarily incurred, the Trustee shall cover any of the remaining costs.

Anthony Arter

Pensions Ombudsman
17 February 2021

Appendix 1

Extract of the Fund Rules

30.2 Trustees' Discretion to Transfer-out

Instead of providing benefits under the fund in respect of a Member, the Trustees may transfer assets to another occupational pension scheme or to a personal pension scheme so that benefits will be provided under the other scheme for any person who would otherwise have received benefits under the Fund. The transfer must satisfy the requirements of the Preservation and Contracting-out Laws and the requirements of the Inland Revenue. In particular the receiving scheme must be:

- 30.2.1 an occupational pension scheme with Revenue approval, or which otherwise satisfies the Inland Revenue's requirements; or
- 30.2.2 a personal pension scheme approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988; or
- 30.2.3 a "statutory scheme" as defined in section 612(1) of the Income and Corporation Taxes Act 1988.
- 30.2.4 an overseas scheme or arrangement that satisfies the Inland Revenue's requirements.

[...] The Trustees will calculate the amount of the transfer payment in respect of a Member of the Defined Benefit Section after considering the advice of the Actuary.

Appendix 2

Extract of the minutes from the Trustee's board meeting on 17 July 2018

"5. Discretions Committee

5.2 Requests for transfers outside the UK

The Trustees noted that two members had requested overseas transfers. The Trustees had received the due diligence reports from Barnett Waddingham. The members had been informed that their requests had to be approved by the full Trustee board and not the discretions committee because of the issues that arose for the Fund in general.

It was discussed that notwithstanding the due diligence exercise, the Trustee could not rely on the current list of HMRC schemes, known as ROPS, as definitive proof that such schemes were qualifying schemes for the purposes of allowing a transfer overseas without the deduction of tax. This was because HMRC no longer certified that such schemes actually qualified for such treatment. The list on HMRC's website was only evidence that such schemes had completed the registration process as overseas pension schemes, but not that they qualified so far as the treatment of tax was concerned. This meant that in the event that a scheme did not legally qualify (notwithstanding being on the list of QROPS), HMRC could take action in respect of tax due on an overseas transfer to a non-qualifying scheme, and also levy a sanction on the Trustee.

The Trustee was informed that the members would still be able to transfer out of the fund to a defined contribution scheme, which would enable them to exercise their pension freedoms.

It was noted that Barnett Waddingham had carried out extensive due diligence and further due diligence was unlikely to address the issue of whether the overseas schemes did in fact qualify as QROPS. Further due diligence would incur a cost for the Fund and would be disproportionate in time and cost given the position on HMRC rules would be changed as a result of this exercise.

The Trustee was aware that one of the members had stated that he would be happy to bear any tax consequences. However that was not a basis for agreeing to a transfer. It was agreed that the members would be informed that the requested transfers would not [sic] be approved. Extensive due diligence had not been conclusive in relation to the application of HMRC rules and the Trustee did not consider further due diligence would be proportionate. The members would be informed that if they wished additional due diligence to be carried out, they would be asked to bear the costs as it would not be proportionate. The members should be reminded that they were able to transfer their funds to a UK-based scheme."

Appendix 3

Extracts from the Pension Schemes Act 1993

Part 4ZA – Transfers and Contribution Refunds, Chapter 1 – Transfer Rights: General

Section 93 Scope of Chapter 1

- (1) This Chapter applies to a member of a pension scheme if all of the following conditions are met.
- (2) Condition 1 is that the member has accrued rights to any category of benefits under the scheme rules.
- (3) Condition 2 is that no crystallisation event has occurred in relation to the member's accrued rights to benefits in that category (see subsection (7)).
- (4) Condition 3 is that-
 - (a) the member is no longer accruing rights to benefits in that category (see subsection (8)), and
 - (b) in the case of benefits that are not flexible benefits, the member stopped accruing those rights at least one year before normal pension age.
- (5) But this Chapter does not apply to-
 - (a) a member of a salary related occupational pension scheme whose pensionable service terminated before 1 January 1986 and in respect of whom prescribed requirements are satisfied;
 - (b) a member of a personal pension scheme which is comprised in an annuity contract made before 4 January 1988.
- (6) In this Chapter a reference to a "category" of benefits is to one of the following three categories-
 - (a) money purchase benefits;
 - (b) flexible benefits other than money purchase benefits;
 - (c) benefits that are not flexible benefits.
- (7) For the purposes of Condition 2 a crystallisation event occurs in relation to a member's accrued rights to benefits in a category when-
 - (a) payment of a pension in respect of any of the benefits has begun,
 - (b) in the case of money purchase benefits, sums or assets held for the purpose of providing any of the benefits are designated as available for the payment of drawdown pension (as defined by paragraph 4 of Schedule 28 to the Finance Act 2004), or

- (c) in the case of a personal pension scheme, sums or assets held for the purpose of providing any of the benefits are applied for purchasing an annuity or insurance policy.
- (8) For the purposes of Condition 3 a member stops accruing rights to a category of benefits when there are no longer arrangements in place for the accrual of rights to benefits in that category for or in respect of the member.
- (9) In this section a reference to accrued rights does not include pension credit rights.
- (10) Regulations may-
 - (a) provide for this Chapter not to apply in relation to a person of a prescribed description;
 - (b) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;
 - (c) modify the application of this Chapter in relation to a member who has accrued rights to benefits of a prescribed description.
- (11) In the following provisions of this Chapter-
 - (a) a reference to a “member” of a pension scheme is a reference to a member to whom this Chapter applies, and
 - (b) a reference to a member’s “transferrable rights” are to any rights in relation to a category of benefits by virtue of which this Chapter applies to the member.

Section 95 Ways of taking right to cash equivalent

- (1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below.
- (1A) In the case of a right acquired under section 94(1), the application must be made—
 - (a) within the period of 3 months beginning with the guarantee date shown in the relevant statement of entitlement, and
 - (b) if the cash equivalent relates to benefits that are not flexible benefits, by no later than the date that falls one year before the member attains normal pension age.

- (2) In the case of a member of an occupational pension scheme that is not an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are—
- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's transferrable rights, and
 - (ii) which satisfies prescribed requirements;
 - (b) for acquiring rights allowed under the rules of a personal pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's transferrable rights, and
 - (ii) which satisfies prescribed requirements;
 - (c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy prescribed requirements;
 - (d) for subscribing to other pension arrangements which satisfy prescribed requirements.
- (2A) In the case of a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are—
- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme if—
 - (i) the benefits that may be provided under the other scheme by virtue of the transfer credits are not flexible benefits,
 - (ii) the trustees or managers of the other scheme are able and willing to accept payment in respect of the member's transferrable rights, and
 - (iii) the other scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;
 - (b) for acquiring rights allowed under the rules of a personal pension scheme if—
 - (i) the benefits that may be provided under the personal pension scheme by virtue of the acquired rights are not flexible benefits,

- (ii) the trustees or managers of the personal pension scheme are able and willing to accept payment in respect of the member's transferrable rights, and
 - (iii) the personal pension scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;
 - (c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy requirements prescribed in regulations made by the Secretary of State or the Treasury;
 - (d) for subscribing to other pension arrangements which satisfy requirements prescribed in regulations made by the Secretary of State or the Treasury.
- (2B) The Treasury may by regulations provide for sub-paragraph (i) of subsection (2A)(a) or (b) not to apply in prescribed circumstances or in relation to prescribed schemes or schemes of a prescribed description.
- (2C) In subsections (2) and (2A) “unfunded public service defined benefits scheme” means a public service pension scheme that—
 - (a) is a defined benefits scheme within the meaning given by section 37 of the Public Service Pensions Act 2013, and
 - (b) meets some or all of its liabilities otherwise than out of a fund accumulated for the purpose during the life of the scheme.
- (3) In the case of a member of a personal pension scheme, the ways referred to in subsection (1) are—
 - (a) for acquiring transfer credits allowed under the rules of an occupational pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's transferrable rights, and
 - (ii) which satisfies prescribed requirements;
 - (b) for acquiring rights allowed under the rules of another personal pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's transferrable rights, and
 - (ii) which satisfies prescribed requirements;
 - (c) for subscribing to other pension arrangements which satisfy prescribed requirements.

- (5) Except in such circumstances as may be prescribed—
 - (a) subsection (2) is to be construed as if paragraph (d) were omitted; and
 - (b) subsection (3) is to be construed as if paragraph (c) were omitted.
- (5A) Except in such circumstances as may be prescribed in regulations made by the Secretary of State or the Treasury, subsection (2A) is to be construed as if paragraph (d) were omitted.
- (6) Without prejudice to the generality of subsections (2) , (2A) and (3), the powers conferred by those subsections include power to provide that a scheme or pension arrangement or, in the case of subsection (2) or (2A), an annuity must satisfy requirements of the Inland Revenue.
- (6A) Regulations may extend the period specified in subsection (1A)(a) in prescribed circumstances.
- (9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service.

Appendix 4

Extracts from The Occupational Pension Schemes (Transfer Values) Regulations 1996 – SI 1996/1847

Part IV – Receiving Schemes, Annuities and Arrangements

Regulation 12 - Requirements to be met by receiving schemes, annuities and arrangements

- (1) The prescribed requirements referred to in section 95(2)(a)(ii) and (b)(ii) of the 1993 Act (cash equivalent of member's rights in a scheme to be used for acquiring transfer credits or rights under another scheme or personal pension scheme) are that—
 - (a) if the member's cash equivalent (or any portion of it to be used under section 95(2)(a) or (b) of the 1993 Act) is or includes the cash equivalent of accrued rights to guaranteed minimum pensions, then the scheme or personal pension scheme under whose rules transfer credits or rights are acquired is one to which those accrued rights may be transferred, or to which a transfer payment in respect of those accrued rights may be made, in accordance with regulation 2 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996;
 - (b) if the member's cash equivalent (or any portion of it to be used under section 95(2)(a) or (b) of the 1993 Act) is or includes the cash equivalent of accrued section 9(2B) rights, then the scheme or personal pension scheme under whose rules transfer credits or rights are acquired is one to which a transfer of liability in respect of those accrued rights may be made in accordance with regulation 7 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996; and
 - (d) if the scheme from which rights are transferred or from which a transfer payment is made is registered under section 153 of the Finance Act 2004, the scheme or personal pension scheme to which rights are transferred or to which a transfer payment in respect of rights is made is registered under that section (except a scheme which was immediately before 6th April 2006 approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988) or is a qualifying recognised overseas pension scheme as defined in section 169 of the Finance Act 2004.
- (2) The prescribed requirements referred to in section 95(2)(c) of the 1993 Act (cash equivalent to be used for purchasing annuities) are that—
 - (a) the annuity is provided by an insurance policy or an annuity contract which satisfies the requirements of regulations 2, 3, 4 and 5 or, in the case of a pension or accrued benefit under a relevant scheme, regulation 11 of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997;

- (b) if the scheme from which rights are transferred is registered under section 153 of the Finance Act 2004, the annuity satisfies requirements of Her Majesty's Revenue and Customs.
- (4) The prescribed circumstances referred to in section 95(5)(a) of the 1993 Act (except in prescribed circumstances section 95(2) to be construed as if paragraph (d) were omitted) are that a member of a scheme who has acquired a right to a cash equivalent under section 94 of that Act has required the trustees to use the cash equivalent for subscribing to a pension arrangement mentioned in paragraph (5)(a).
- (5) The prescribed requirements referred to in section 95(2)(d) of the 1993 Act (cash equivalent to be used for subscribing to pension arrangements not mentioned in section 95(2)(a) to (c)) are that the pension arrangement to which it is proposed to subscribe—
 - (a) is an overseas arrangement;
 - (b) if the cash equivalent is or includes the cash equivalent of accrued section 9(2B) rights, is one to which a transfer payment in respect of such rights may be made in accordance with regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996; and
 - (c) if the scheme from which rights are transferred is registered under section 153 of the Finance Act 2004, is a qualifying recognised overseas pension scheme as defined in section 169 of the Finance Act 2004.
- (6) In this regulation—
 - (b) “overseas arrangement” has the same meaning as in the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

Part III – Statements of Entitlement and Calculation of Transfer Values

Regulation 10 – Increases of cash equivalents on late payment

- (1) Subject to paragraph (2), if the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail to do what is needed to carry out what the member requires within six months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.
- (2) If the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail without reasonable excuse to do what is needed to carry out what the member requires within six months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by—

- (a) interest on that cash equivalent calculated on a daily basis over the period from the appropriate date to the date on which the trustees carry out what the member requires, at an annual rate of one per cent. above base rate; or, if it is greater,
- (b) the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.

Appendix 5

Extract from The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 – SI 2013/2734

Part 5, Regulation 16 – Statement of benefits: non money purchase benefits

- (1) The information mentioned in paragraph (2) must be given in accordance with this regulation where-
 - (a) The member has rights to benefits that are not money purchase benefits,
 - (b) The member requests that information,
 - (c) Information has not been given to that member under this regulation in the 12 months before that request, and
 - (d) In relation to active members, a benefits information statement has not been provided pursuant to section 14(1) (information about benefits) of the 2013 Act in the 12 months before the request in sub-paragraph (b).
- (2) The information is-
 - (a) For active members, the information listed in Parts 1 and 2 of Schedule 5,
 - (b) For deferred members, the information listed in Parts 2 and 3 of that Schedule.

Schedule 5, Part 2 – Information for active and deferred members

4. The date on which the member's pensionable service started.
5. A summary of the method for calculating the member's benefits and any survivors' benefits.
6. Details of how any deduction from benefits is calculated.

Schedule 5, Part 3 – Information for deferred members

7. The date the member's pensionable service ended.
8. The amount of the member's benefits and survivors' benefits payable from the date benefits are payable.
9. The amount of the member's pensionable remuneration on the date pensionable service ended.