

Ombudsman's Determination

Applicant	Mr N
Scheme	Cape PLC Defined Contribution Plan (the Plan)
Respondents	Capita Employee Benefits (Capita) Cape Defined Pension Trustees Limited (the Trustee)

Complaint Summary

1. Mr N's complaint against Capita is that before the Plan wound up, it caused a delay in providing details of his retirement options and transfer value. The pre April 1997 service where benefits were a Guaranteed Minimum Pension (**GMP**), has since been transferred to a buy-out plan with Legal & General (**L&G**), which was selected by the Trustee. Mr N asserts that as a result of Capita's delay, the transfer value of the GMP that L&G quoted to him in 2018, was less than it would have been, had it been transferred-out of the Plan before wind-up.
2. Mr N's complaint against the Trustee is that it did not know, or did not tell him, that the calculation methodology used by L&G would result in a lower onward transfer value in respect of his GMP. Had it so informed him, he would have transferred-out of the Plan instead.

Summary of the Ombudsman's Determination and reasons

3. The complaint against Capita is not upheld because the reduced transfer value of Mr N's GMP, after it was transferred to L&G, is not due to any maladministration by Capita.
4. My Office has informed Mr N that we have exercised our discretion not to investigate his complaint against the Trustee. This is because the Plan has been wound up and the Trustee company has been dissolved, so any directions that we issued would be unenforceable against the Trustee. The Trustee (if it had not been dissolved) would also have been able to rely on the exoneration clause in the trust deed and rules in the absence of wilful neglect or default. I also do not consider it appropriate to "pierce the corporate veil" and investigate a complaint against the individual trustee directors in their personal capacity because I have seen no evidence of dishonesty on their part.

Detailed Determination

Material facts

5. Initially, Mr N was a member of the Plan. Clause 36 of the Plan's Trust Deed and Rules (**the Rules**) states:

“Without prejudice to the powers and discretions vested in the Trustees by the other provisions hereof and except as provided below, the Trustees shall be entitled to all the indemnities conferred on trustees by law and shall not be liable for acting on the advice of the auditors appointed under the Rules or on any other advice the Trustees may obtain directly or indirectly from such corporation, company, firm or person as shall in their opinion be qualified by experience or otherwise to advise them, nor shall any Trustee be liable for any acts or omissions not due to his own wilful neglect or default nor shall it be obligatory upon the Trustees to see that any contributions or other moneys payable to them under the Plan are in fact paid.”

6. In April 2016, Mr N took out an income drawdown plan with Standard Life (**the Drawdown Plan**). He had decided to retire early and drawdown was deemed suitable for his circumstances. At the time, the Plan was administered by Standard Life and did not offer a drawdown option. Mr N transferred the benefits from another paid up plan, to the Drawdown Plan. Sometime after the transfer, the Trustee commenced the winding-up of the Plan.
7. In March 2017, Mr N asked Capital Managers LLP (**the Adviser**) to investigate his retirement options in respect of his benefits in the Plan, prior to his normal retirement date (**NRD**), which was in October 2017. On 28 March 2017, the Adviser wrote to Capita requesting, “full information in relation to [Mr N's] pension benefits, including a transfer value”. This was received by Capita on 30 March 2017.
8. On 3 April 2017, Capita wrote to the Adviser and provided details of the estimated retirement options available to Mr N in relation to his money purchase benefits. The letter also advised that the pre April 1997 fund value of £73,059.80 had to be used to provide a GMP payable from age 65, and if there was a balance left after paying for the cost of the GMP this might be taken as a cash sum (subject to tax rules).
9. On 25 April 2017, the Adviser contacted Capita by telephone for an update. Capita informed the Adviser that Mr N's documents still needed to be checked and would be issued to Mr N the following week. Capita has said it explained, in that telephone call, that a charge would be payable to produce a cash equivalent transfer value (**CETV**) quotation, as Mr N was within 12 months of his NRD.
10. On 8, 17, 19 and 30 May 2017, Mr N and the Adviser corresponded with Capita to try to obtain details of Mr N's benefit options under the Plan. Following the Adviser's call on 19 May 2017, Capita identified that Mr N's case had not been allocated to a checker, and it was added to the “urgent” spreadsheet for the following week.

11. On 13 June 2017, Capita e-mailed the Adviser and provided basic information about Mr N's benefit options. It also confirmed that a fee of £300 +VAT was payable for a CETV quotation, and that ill-health retirement figures would follow in a separate letter. On 16 June 2017, the Adviser telephoned Capita to arrange the payment of the fee as Mr N had confirmed he wished to proceed with a transfer.
12. On 28 June 2017, Capita received confirmation that the invoice had been paid, and on 3 July 2017, Capita requested a CETV quotation from the Plan actuary (**the Actuary**).
13. On 19 July 2017, Capita received the CETV quotation from the Actuary, it was issued to the Adviser on 20 July 2017. Of the total value of £104,164 benefits shown, just over £34,000 was the value of additional voluntary contributions (**AVCs**); the remainder was the value of the GMP. The figures were guaranteed until 12 October 2017. The Adviser received the quotation on 25 July 2017. The covering letter said:

“Please note as the member is within 1 year of his [NRD] and does not have a statutory right to transfer [sic]. If the member is looking to transfer his benefits, we will need to seek approval from [the Trustee]...

As well as having the option to transfer benefits to another pension scheme, the member may also be able to access his retirement benefits directly from the Plan. Please contact Capita if the member would like to receive a retirement quote...

The transfer value quoted is not guaranteed and will fluctuate in line with unit prices. The actual value paid will depend on the unit price when the funds are sold with the investment manager(s). The actual transfer value could be higher or lower than the one quoted. Following receipt of a written application to transfer, by law the Trustees of the Plan have six months to pay the transfer value to the receiving scheme.”

14. Around this time, the Trustee split the Plan benefits into two parts. The first, pre April 1997 service, where the benefits were the GMP. The second, post April 1997 service, where the benefits were AVCs.
15. There was then an exchange of further correspondence between the Adviser and Capita. On 3 August 2017, the Adviser requested retirement figures and details of Mr N's ill-health options, as Capita's letter of 13 June 2017 had said that ill-health retirement figures would be sent separately but they had not been received. On 9 August 2017, Capita replied to the Adviser and said:

“I refer to your request for the above member retirement options.

Please be advised that as the member holds PRE97 funds only, we must request the annuity from our Annuity Provider (Harley Hepworth). The Annuity Provider can only request quotes around 6 weeks before the member's normal retirement date, therefore we have made a note on the member's record to

request this quote at that date and once we have this quote issued to us, we will forward this on to you and the member...”

16. On 21 August, 11 September and 21 September 2017, Mr N and the Adviser corresponded further with Capita to try and obtain the remainder of his options under the Plan. The annuity provider issued the annuity quotation to Capita on 19 September 2017, which Capita forwarded to the Adviser on 25 September 2017. The Adviser received this on 3 October 2017.
17. In September 2017, the Trustee was in close liaison with L&G on buying out the Plan’s liabilities. On or around 30 September 2017, a freeze on transfers out of the Plan came into effect.
18. On 3 October 2017, the Adviser spoke with Capita about Mr N possibly taking tax-free cash (**TFC**) from the Plan. Capita said that it would issue a further illustration for this. It also confirmed that the Trustee would allow a transfer out after Mr N’s NRD.
19. On 12 October 2017, the CETV quotation expired.
20. On 26 October 2017, Capita told Mr N about the transfer out freeze. After further discussions with the Trustee, it was agreed he could transfer out his AVCs, but not the GMP.
21. In November 2017, the Plan completed winding-up. On 6 November 2017, Capita transferred £71,463.73 to L&G to buy-out Mr N’s GMP. Around the same time, the Trustee confirmed, at Mr N’s request, that he could transfer his GMP element away from L&G once the transfer had been completed, and that there would be no issue with regard to a transfer.
22. In January 2018, the transfer of Mr N’s AVCs, £33,379.52, to Standard Life completed.
23. In March 2018, Mr N received confirmation that his GMP funds had been received by L&G. In April 2018, L&G provided Mr N with a transfer value quotation for the GMP. The transfer value being lower than he expected, Mr N complained to the Trustee in June 2018. In summary Mr N said:-
 - Through an assessment of his circumstances, it was decided that a transfer out would be allowed. After many delays by the Trustee and Capita, including the inability to issue correct benefit information, it was confirmed that he could transfer out.
 - As he was approaching his NRD, he asked if going beyond this would cause problems. On 3 October 2017, Capita informed him that it would not.
 - After chasing Capita for some outstanding information, he was eventually told, on 26 October 2017, that there was a freeze on transfers out.

- The Trustee later allowed him to transfer his AVCs; Capita also said there was no problem transferring the GMP out of L&G once the buy-out was complete.
- Based on the transfer value previously provided, which was about £104,000, he expected the GMP fund to be worth around £70,000; but L&G quoted him a transfer value of £58,000.
- As a result of the “incompetence” of the Trustee and Capita, he had suffered a substantial loss and should be compensated.

24. In July 2018, the Trustee responded to Mr N's complaint and said:-

- The issue was that L&G was offering transfer values “well below” the cost paid to it.
- Capita had been slow responding in May 2017, but it appeared the crucial element was that a transfer quotation was issued on 20 July 2017, but not acted upon in time.
- From September 2017, it was “very advanced in liaison” with L&G about the buy-out, so it was decided not to permit transfers out.
- The Trustee's adviser focused on pre April 1997 service, where benefits included the GMP; the funds to buy-out the GMP were transferred to L&G on 10 October 2017.
- During this time, the Trustee was acting in the best financial interest of members by securing their benefits with L&G.
- When members enquired further regarding transferring their benefits out of L&G, the Trustee was “surprised and upset” to learn of L&G's transfer value calculation methodology.

Summary of Mr N's position

25. Mr N says:-

- The Adviser has no record of receiving the letter that Capita had sent on 3 April 2017. The first time the Adviser saw this document was when the Pensions Ombudsman's Office (**TPO's Office**) sent him a copy.
- The Adviser had sent a request for information to Capita on 28 March 2017. Post leaves the Adviser's office by second class post. So, this request would have been received by Capita on Thursday 30 March 2017.
- He questioned whether Capita would have really turned around the retirement figures within 2-3 working days, as Capita has confirmed it had a backlog in providing information.

- After 3 April 2017, the Adviser had chased Capita on several occasions. Yet, no one from Capita had mentioned that the retirement quotation had been sent.
- In correspondence to TPO's Office, Capita suggests that the retirement quotation was sent to him. However, the one provided was addressed to the Adviser. He did not receive this document. Had he done so, he would have passed it to the Adviser as he always did.
- He questioned whether the retirement quotation was ever issued.
- Even if the Adviser had received the retirement quotation, he would not have been able to use it. The document only provided confirmation of the pre April 1997 fund value, yet the quoted pension commencement lump sum was based on the full transfer value.
- The Adviser would have needed clarification on a number of points before moving on.
- The Adviser has no record that Capita had informed him, prior to 13 June 2017, that a fee was payable for the CETV. The Adviser had chased Capita on several occasions, before 13 June 2017, but no one had informed him that the CETV quotation would not be requested until the fee had been paid.
- Throughout the process, Capita had confirmed that calculations were being done and were being checked.
- It is clear from correspondence between Capita and TPO's Office that Capita had knowledge that the Plan was being closed. In fact, Capita used this as an excuse for its failure to meet service standards, in relation to the provision of annuity quotes.
- During the closure of a pension scheme, procedures should be put in place to ensure retiring members are dealt with within a timely manner, and not deemed to be a "secondary priority".
- The Trustee said the transfer could have completed, had the transfer out quotation issued on 20 July 2017 been acted on. But this was not possible as he was still waiting on further information from Capita concerning his benefit options.
- The Trustee said it was liaising with L&G over the buy-out in September 2017. His CETV quotation expired on 12 October 2017, but in August 2017, he was concerned that he had not received the information he needed to decide whether transferring out was suitable. The information requested was delayed until the end of October 2017, at which point he was told it was too late because transfers were on hold.
- The Trustee said it was acting in the best financial interest of members by securing their benefits with L&G. Yet, it admitted it was "surprised and upset" to learn of L&G's transfer calculation method.

- The Trustee was at fault for not informing him that L&G would apply a different onward transfer out calculation method. As a result, the transfer value of the GMP fell from around £70,000 to £58,000. Since then, the value had fallen further to approximately £54,000.
- Further, had Capita acted in a “professional and timely” way, the issue would not have occurred in the first place. He would have transferred-out his benefits prior to the closure of the Plan. The delays and mistakes over the annuity quotes were Capita’s fault.
- He was nearly a year beyond NRD; he had begun considering how to take his benefits back in March 2017. He was the victim of “extremely poor administration”, and of a Trustee who had failed to understand the consequences of its actions.
- The Trustee did not allow the GMP to be transferred to a personal pension as it had “done a deal” with L&G.
- The transfer pack confirmed that he could also access retirement benefits directly from the Plan. Capita said he should contact it if he wanted a retirement quotation. As he was considering retirement, it would have been wrong not to request this information for him to compare all his options.
- The Adviser requested the information for the retirement quotations on 3 August 2017. At the same time, the Adviser chased Capita for ill health figures, which Capita had mentioned in its letter of 13 June 2017.
- He received confirmation, on 14 August 2017, that retirement figures would not be obtained until six weeks before his NRD; this was raised with Capita at the time. The annuity quotations were received on 3 October 2017. There was no TFC or reduced pension option; this prompted more questions of Capita.
- In a telephone call on 3 October 2017, Capita confirmed to the Adviser that it was likely that TFC would be payable and that it would provide another illustration. Capita also said there would be no issues with him going beyond his NRD. It was only on 26 October 2017, that Capita finally confirmed that there was a freeze on transfers out because of the wind-up.
- His intention was always to transfer his benefits in the Plan to the Drawdown Plan then use the funds to provide a flexible income in retirement. Having poor health, no spouse and no children, accepting the GMP was not an attractive option for him. The death benefits and ability to pass them on are important to him, as is the ability to control/enjoy the fund while he is still alive.
- He has not yet transferred, nor received an income from the GMP.
- He is disappointed there is no option to take the Trustee to task.

Summary of Capita's position

26. Capita says:-

- It is not responsible for the reduction in Mr N's transfer value from L&G.
- Mr N's request for a CETV quotation was first received on 30 March 2017; he also asked about other options at the time. In a telephone call on 25 April 2017, the Adviser was informed there was a fee for the CETV quotation, as Mr N was within a year of his NRD. Sadly, there was a backlog of work on the Plan and the information about Mr N's other options was not issued until 13 June 2017.
- An invoice for the CETV quotation fee was raised on 16 June 2017, and settled by Mr N on 26 June 2017. Capita received confirmation that the fee had been paid on 28 June 2017, and subsequently requested a CETV quotation from the Actuary.
- It could not explain why there was a gap from when the Adviser was told there was a charge for a CETV quotation on 25 April 2017, to when the Adviser requested an invoice on 16 June 2017. It is possible that the Adviser was waiting on additional information about Mr N's benefit options before deciding if a transfer was suitable.
- The CETV quotation was issued on 20 July 2017, guaranteed until 12 October 2017. It spoke with Mr N on 3 August 2017 about ill-health options. But as the Plan was a defined contribution scheme with a GMP underpin (and he was two months from his NRD), it was unclear what ill-health options would have been available. Around the same time, it issued details of his retirement options, that is, a pension organised by way of an annuity, with details usually being supplied six weeks before NRD.
- On 26 October 2017, it confirmed that the Trustee had implemented a freeze on transfers out of the Plan. It was arguable that the GMP ought to have been in payment from 16 October 2017, so the guarantee period had already passed by then.
- The amount transferred to L&G for Mr N's GMP was approximately £70,000. So, the value was unaffected by any real or alleged delay.
- The difference between the amount transferred to L&G and the amount eventually transferred-out was due to a different transfer value calculation method for the GMP; it assumes this was due to actuarial changes or the Trustee bought out the benefit on a non-identical basis to that used for the Plan. In any case, Capita was not responsible for this reduction.
- The Trustee had written to members of the Plan on 6 November 2017, and informed them that, "the benefits to be provided by the L&G will be identical to

those that would have been provided by the Plan". L&G should be asked to explain why the value of the GMP had reduced, between 2017 and 2018.

- Capita's service standard is five days to reply, following an initial request for an annuity quotation, and five days to send the quotation once it has been received. These time scales were met in Mr N's case.
- It is unsure when the transfer out freeze started, but believes this was at the end of September 2017. It is unfortunate that the guarantee expiry date fell within this period.
- It is unsure why the transfer was allowed after Mr N reached his NRD. The Plan was unusual, being a defined contribution arrangement with a GMP underpin, however the GMP became payable at age 65. It understands that the Trustee allowed a transfer out after Mr N's NRD as an act of pragmatism. With the benefit of hindsight, it is "obvious" that an insurer would always pay a lower transfer value.

27. Although not a party to the complaint, L&G provided a copy of the benefit specification which explained the benefits secured under its buy-out policy and:-

- Confirmed that the GMP benefits from the Plan were transferred to L&G, and the inception date was 10 October 2017.
- Confirmed Mr N's benefits were revalued to his NRD and the total pension payable was £2,384.72. The value of the pre 1988 GMP was £162.76 and the value of the post 1988 GMP was £2,221.96.
- L&G also explained:-
 - Pension trustees, based on input from advisors, are able to incorporate an underpin as part of a buy-out, which would then link the transfer value calculation to a member's fund value, creating a more comparable set of figures.
 - It was not asked to provide such a mechanism as part of the transfer of Mr N's benefits, and it is not able to introduce one at this stage and remain consistent with its interpretation of the "Matching Adjustment eligibility" requirements under Solvency II.
 - The factors it takes into account when deriving a purchase price, and that the cost assumes that it is entering into a long-term contract to provide the annuity payments. So, the considerations can be quite different when converting these payments into an immediate transfer value.

Conclusions

The Trustee

28. Mr N has complained that the Trustee did not make him aware that L&G would adopt a different methodology for calculating the onward transfer value of his GMP.
29. My Office has previously informed Mr N that our power to investigate complaints under Section 146 of the Pension Schemes Act 1993 (**the Act**) is a discretionary power that is not always exercised. Relevant sections of the Act can be found in the Appendix. We also informed him that because the Plan had wound up and the Trustee had been discharged from its duties in respect of the Plan, any directions made against it would be unenforceable. For this reason, we considered that we should exercise discretion not to investigate Mr N's complaint against the Trustee. None of the parties to the complaint informed us of any reason that would lead to a different conclusion, so we did not accept the complaint against the Trustee for investigation.
30. I have considered the possibility of investigating a complaint by Mr N against the individual directors of the Trustee in their personal capacity. I am not able to "pierce the corporate veil" of a trustee company to find the individual trustee directors personally liable for the actions of the trustee company except, broadly, where there has been dishonesty.
31. I have not seen any evidence of dishonesty by the individual trustee directors in this case. The Trustee stated in its letter of 23 July 2018, that it worked with its advisers during the buy-out process, and that it acted in the best financial interest of members by securing their benefits with a reputable company, L&G. So, I do not consider it appropriate to investigate a complaint against the individual trustee directors in their personal capacity.

Capita

32. Mr N's complaint against Capita is that before the Plan wound up, Capita delayed providing details of his retirement options and transfer value. Mr N says this has caused him a financial loss because the transfer value of the GMP that L&G quoted to him in 2018 was less than if he had been able to transfer prior to the Plan's wind-up.
33. The Adviser first requested full details of Mr N's pension benefits, including a CETV quotation, from Capita on 28 March 2017. Capita received the request on 30 March 2017. Capita has acknowledged that there was a delay in sending the Adviser basic information about Mr N's benefit options because of a backlog and that this was not sent until 13 June 2017. However, Capita has provided documentary evidence that shows, within that period, it had informed the Adviser, on 25 April 2017, that there would be a fee for the CETV quotation, as Mr N was within 12 months of his NRD.

34. The Adviser disputes that Capita had informed him, prior to 13 June 2017, that a fee was payable for the CETV quotation. The Adviser has not provided any evidence to refute Capita's assertion. So, in the absence of this, and as a result of the supporting evidence on file, I find that on the balance of probabilities, Capita did inform the Adviser, prior to 13 June 2017, that a fee was payable for a CETV quotation.
35. Capita did not receive confirmation that the fee for the CETV quotation had been paid until 28 June 2017. There was no obligation on Capita to request the CETV quotation prior to that date.
36. Capita requested the CETV quotation from the Plan's Actuary on 3 July 2017 and received it on 19 July 2017. It then sent the CETV quotation to the Adviser on 20 July 2017. I find that there was no unreasonable delay from when Capita requested and received the CETV quotation and when it sent it to the Adviser.
37. After receipt of the CETV quotation, on 3 August 2017, the Adviser requested retirement figures from Capita. Capita responded to the Adviser on 9 August 2017 and explained that, because of the type of benefits Mr N had in the Plan, the annuity quote could only be requested six weeks before his NRD. This resulted in further correspondence between the Adviser and Capita concerning the provision of an annuity quotation.
38. I understand that prior to deciding whether transferring his benefits from the Plan was his best option, Mr N would have wanted details of all his options, including an annuity, to make an informed decision. However, Capita cannot be held responsible for the annuity provider not being able to provide an annuity quotation for Mr N earlier than six weeks before his NRD. Capita informed the Adviser less than a week after it received the Adviser's request, of when the annuity quotation for Mr N could be requested, so Mr N and the Adviser ought to have been aware that it might not be received prior to the expiration of the CETV quotation.
39. The annuity provider issued the annuity quotation to Capita on 19 September 2017, which Capita sent to the Adviser, within four working days, on 25 September 2017. This was received by the Adviser on 3 October 2017, and on the same date, the Adviser requested from Capita details of the TFC Mr N could receive.
40. It would have been helpful if the Plan's annuity provider had included details of Mr N's TFC, if any, as part of the September 2017 quotation. However, Capita is not responsible for this.
41. Further, on or around 30 September 2017, a freeze on transfers out of the Plan came into effect because the Trustee was in advanced discussions with L&G regarding buying out the Plan's liabilities. The decision to implement the freeze, which took effect during the time that Mr N was considering his retirement options, was not made by Capita and there was no obligation to notify members in advance of the decision.

PO-25165

42. Capita has confirmed in correspondence that it was not aware of the details of the buy-out with L&G and it was not involved in the negotiation of those terms, albeit it was aware that the Plan's liabilities were to be bought out.
43. I do not find there were any unreasonable delays by Capita that resulted in Mr N not being able to transfer his benefits from the Plan before the implementation of the transfer freeze or the expiration of Mr N's CETV quotation. Capita is also not accountable for any fluctuations in the quoted CETV for Mr N's GMP since completion of the buy-out.
44. I do not uphold Mr N's complaint against Capita.

Anthony Arter

Pensions Ombudsman
20 September 2021

Appendix

Section 146 of the Pension Schemes Act 1993

146 Functions of the Pensions Ombudsman

- (1) The Pensions Ombudsman may investigate and determine any complaint made to him in writing by or on behalf of an authorised complainant who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of the trustees or managers of an occupational pension scheme or personal pension scheme.