PO-25314

Ombudsman's Determination

Applicant	Mr Y
Scheme	Weatherford Group Pension Plan (**the Plan**)
Respondents	The Trustees of the Weatherford Group Pension Plan (**the Trustees**) Mercer

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Trustees or Mercer.

Complaint summary

2. Mr Y's complaint concerns the reduction of the cash equivalent transfer value (**CETV**) of the defined benefit element of his benefits in the Plan (**the DB element**). He believes the Trustees' and Mercer's delays resulted in the CETV of the DB element having to be recalculated and that he has suffered a financial loss as a result.

Background information, including submissions from the parties

3. The Plan is a hybrid pension plan. It is made up of: (i) the DB element, which is a defined contribution component that is underpinned by a defined benefit, relating to active membership prior to 1 September 2002; and (ii) a defined contribution component in respect of active membership after 1 September 2002 (**the DC element**).

4. Mr Y was an active member of the Plan when, in March 2016, he met with Mercer and discussed his options in relation to his Plan benefits. Mercer administers the Plan on behalf of the Trustees. In the same month, Mr Y opted out of the Plan so that he could apply for Fixed Protection 2016.

5. Between 2 June 2016 and 28 November 2016, there were exchanges between Mercer, Mr Y's independent financial adviser (**IFA**) and Mr Y concerning Mr Y's benefits in the Plan (**Mr Y's benefits**). During this period the IFA requested and Mercer sent to the IFA, a current value and a CETV of Mr Y's benefits.

6. On 13 February 2017, Mercer received the IFA's request for a further CETV quotation of Mr Y's benefits. The CETV quotation was sent to the IFA on 22 February 2017, with an effective date of 17 February 2017 (**the February Quotation**). This Quotation was valid until 17 May 2017, and it included the CETVs of both the DB and DC elements of Mr Y's benefits.

7. On 7 March 2017, the Plan implemented a blackout period (**the blackout**). This was in relation to the switching of the Plan's assets into new investment arrangements.

8. Sometime between 7 March 2017 and 20 March 2017, the IFA returned the discharge forms to Mercer.

9. On 20 March 2017:-

   - Mercer wrote to the IFA and:
     - informed it of the outstanding information it (Mercer) needed to complete the transfer of Mr Y's benefits;
     - asked the IFA to confirm that Mr Y only wished to transfer the DC element; and
     - informed the IFA of the blackout and said that members were informed of the blackout on 1 March 2017. It explained that because of the blackout, it was unable to process the transfer at that time. However, the blackout would be lifted on 7 April 2017, and it would then commence processing the transfer.
   - The IFA replied to Mercer and said:
     - it was dissatisfied with the length of time it had taken to inform it (the IFA), of the outstanding information;
     - "**I can confirm [Mr Y] only wants to transfer the portion of his funds which has NO UNDERPINS at this time.**" (Original emphasis).

10. On 21 March 2017, Mercer emailed Mr Y and said:

    "…My colleagues in our administration team are liaising with your IFA about the transfer of your non-underpin funds and the documents required to complete this…"

11. In further emails to Mercer on 21 March 2017 and 11 April 2017, the IFA confirmed that Mr Y's transfer was a partial transfer in relation to the DC element only.

12. On 7 April 2017, the blackout period ended. Mercer informed the IFA of this on 10 April 2017.

13. On 10 May 2017, the IFA emailed Mercer requesting an extension to the guarantee period of the February Quotation. The next day, Mercer replied to the IFA and said:

    "Unfortunately the Trustees do not have a policy of extending guaranteed periods for transfer value quotations beyond the statutory period.

The guarantee date for [Mr Y] will remain as 17 May 2017."

14. On 16 May 2017, Mercer received partial transfer forms from the IFA.

15. On 17 May 2017, the guarantee period for the February Quotation expired.

16. On 16 June 2017, the transfer of the DC element was completed. The value of the DC element had increased due to market movements.

17. On 24 May 2017, O&M Pension Solutions (**O&M**) emailed Mercer and said:

    "We have recently received a request to produce a report for [Mr Y], we are in receipt of the transfer value guaranteed until 17 May 2017. Before we can proceed, we would be grateful if you would supply us with…"

18. On 6 and 27 June 2017, Mercer replied to O&M and provided the requested information.

19. On 16 August 2017, the IFA emailed Mercer. It explained that it was currently discussing with Mr Y, the transfer of his benefits from the Plan, but due to the blackout, and the time to collate all the information, the guarantee period of the February Quotation had expired. It queried if the DB element could be transferred despite the guarantee period of the February Quotation having expired.

20. In a telephone conversation on 17 August 2017, Mercer informed the IFA that CETVs for DB elements were currently on hold. In a subsequent telephone conversation, Mercer informed the IFA that Mr Y's CETV of the DB element would have to be recalculated.

21. In early November 2017, Mercer sent Mr Y a new CETV quotation for the DB element. This quotation had an effective date of 27 October 2017 and was guaranteed for three months (**the October Quotation**).

22. On 3 January 2018, the transfer of the DB element was completed.

23. On 28 February 2018, Mr Y complained to Mercer. He provided a timeline of the events that occurred and in summary said:-

    - He was extremely disappointed with the time taken to process any requests for information and ultimately for the transfer of the funds, which resulted in him receiving a much lower transfer value than initially expected.

    - Due to delays experienced by his IFA in communications with Mercer, it became apparent that submitting the relevant documents by the guarantee date of the February Quotation was unrealistic. As a result, his IFA recommended that he proceed with the transfer of the DC element first. He and his IFA also experienced numerous delays with this transfer.

    - One of his colleagues had encountered the same issues with delays and poor communication from both Mercer and the Trustees. Before his colleague's transfer could be completed, it was identified that there was a shortfall of £405,000 that the Trustees needed to cover. His colleague's DB element transfer was finally completed in December 2017, and its value had increased by 5%.

- As the guarantee period for the February Quotation had expired, he had to personally engage with the Trustees to get some traction in getting the whole process started again. The October Quotation did not take into consideration that he was one year older.
- He believed that if him being one year older had been taken into consideration when the October Quotation was calculated, his DB element would have increased by 4%.
- The CETV on the October Quotation was £41,000 less than the CETV on the February Quotation. He expected the CETV of the February Quotation to be reinstated as it was not his or his IFA's fault that Mercer and the Trustees had let the guarantee period on that Quotation lapse, with poor or no communication. The blackout also had an impact on his transfer.
- He queried why the value of the DB element had not increased whereas the DC element had. There had been no growth on his DB element despite his colleague's fund growing by 5%.
- He believed that there was a shortfall in the DB element in excess of £120,000. He requested the CETV for the DB element be recalculated based on the points he had raised.

24. On 15 June 2018, Mercer replied to Mr Y's complaint. It provided a background of the events that occurred and explained the difference between the CETV for the DB and DC elements on the February Quotation. It also provided additional comments, and these are summarised in paragraphs 25 to 36 below.

25. It apologised for the delay Mr Y had experienced when trying to transfer his benefits, and said it appreciated that it must have been disappointing and frustrating for him. It explained that an in-depth review of his case and the timeline of events was completed in October 2017. His case was discussed again at the Trustees' quarterly meeting held on 7 March 2018, and it was concluded that no shortfall was due in respect of his recent transfer from the Plan.

26. Mercer explained that following the February Quotation being sent to Mr Y, correspondence between Mr Y, Mercer and the IFA, focused solely on the transfer of the DC element. Correspondence on the transfer out of the DC element coincided with the blackout, during which transfers out from the Plan were not being permitted. Nevertheless, correspondence continued during this period.

27. The blackout was a rare event to allow an investment switch to be implemented, where changes were made to the Plan's default investment arrangement. Information on the investment switch was communicated to Mr Y in March 2017.

28. Mercer explained that it had completed a review of the timeliness involved in the transfer of the DC element, and it apologised for the delays in communication and response that Mr Y had suffered. Its administration team had received the completed and up to date transfer out paperwork for the DC element on 16 May 2017. The DC element was transferred to St. James's Place Personal Retirement Plan (**the PPP**) on 16 June 2017. This was within its standard service level agreement timescales for the Plan.

29. The February Quotation guaranteed the DB element for three months, in accordance with statutory guidelines. It did not agree to an extension request from the IFA, in relation to the guarantee period for this Quotation. Doing so would not have been in line with past practice and would have resulted in a non-statutory CETV being paid.

30. After reviewing the timelines involved in his case, it felt that adequate time was available for Mr Y and/or the IFA to have reviewed the February Quotation and return the completed paperwork before the expiration of the guarantee period. This process would not have been affected by the blackout.

31. Its administration team had answered queries from O&M Pension Solutions in June 2017 regarding the nature of the DB element. It then received confirmation from the IFA, on 16 August 2017, that Mr Y wished to proceed with the transfer of the DB element.

32. The administration team advised the IFA that an updated CETV quotation needed to be calculated as the guarantee period of the February Quotation had expired. This was standard practice when a member requested to proceed with a CETV after the guarantee period had expired. During this period, the Trustees were undertaking a review of the transfer value basis within the Plan. This review was done by the Trustees at least every three years, in line with the triennial actuarial valuation.

33. During this review, CETVs in respect of the DB element were placed on hold. A new CETV basis was agreed by the Trustees at their meeting in September 2017. The new CETV basis reflected the updated investment strategy and generally resulted in lower CETVs than the previous basis.

34. In September and October 2017, the Trustees sought legal advice concerning the CETV calculation basis to use for providing updated CETV quotations to members who wished to transfer out, but who's previous CETVs were no longer in the guarantee period. It was concluded that the new CETV basis should be used in these situations.

35. Following this, the October Quotation of the DB element was calculated on the new basis and sent to Mr Y and the IFA in early November 2017. This Quotation accounted for Mr Y's age at the time.

36. Mr Y's transfer from the Plan was not reduced for underfunding. So, the October Quotation was not impacted by the funding level of the Plan, or the amount of deficit reduction contributions paid.

37. Dissatisfied with Mercer's response, on 16 July 2018, Mr Y sent a further letter to Mercer. Mr Y reiterated some of the points he had raised in his 28 February 2018 letter, and added in summary:-

- He would like an explanation for why the calculation basis for the CETV had been changed, to pay out lower transfer values, and why the Trustees had to obtain legal advice.

- He queried why members had not been informed that the calculation basis was being changed, and that it would result in lower transfer values.

38. On 27 August 2018, Mercer replied to Mr Y. Mercer reiterated some of the points it had made in its letter of 15 June 2018. In summary it also said:-

- A periodic CETV basis review aimed to ensure that the CETV basis reflected up to date assumptions and the funding position of the Plan. Particularly, considering the Plan's current investment strategy, market expectations of investment returns and inflation, and the current life expectancy of Plan members.

- The review completed in August 2017 realigned the CETV basis with these factors. As a result, the new CETV basis generally resulted in lower CETVs than the previous basis, all else being equal.

- It was not standard practice to inform Plan members of these standard CETV basis reviews in advance.

- It did not believe the blackout had caused Mr Y to miss transferring the DB element before the expiry of the guarantee period of the February Quotation. This was because the blackout only impacted the DC element of his CETV.

- The CETV basis review and subsequent discussions caused delays to the DB element transfers. However, these commenced in August 2017, which was after the guarantee period of the February Quotation.

- It apologised for the delays Mr Y had experienced when seeking to transfer his benefits from the Plan and if the reasons for these delays had not been communicated to him effectively.

39. On 8 April 2019, Mr Y complained to the Trustees through the Plan's Internal Dispute Resolution Procedure (**IDRP**).

40. On 24 May 2019, the Trustees responded to Mr Y's IDRP complaint. They did not uphold his complaint for broadly the same reasons detailed in Mercer's letters of 15 June 2018 and 27 August 2018.

Mr Y's position

41. Mr Y reiterated some of the points he had made in his letters of 28 February 2018 and 28 July 2018. In addition he said:-

- The IFA commenced corresponding with Mercer in June 2016. There were concerns about the Plan, so he decided to transfer all his benefits from the Plan to the PPP. He first requested a CETV quotation from Mercer in December 2016. On 5 December 2016, his IFA received an email from Mercer informing it that Mercer could not provide up to date values as only one was provided per year, unless a sum of £549.60 was paid. This caused more delays in receiving the February Quotation.

- After many requests for information about the transfer, nothing happened. As the transfer of the DB element was not completed, he contacted the Trustees directly and discussions recommenced. He had to get a recalculated CETV and incurred a loss of £41,000 as a result.

- The CETV of the DB element should not have been recalculated. He believed the calculation basis used for the October Quotation was the same that BT used, which was rejected in a court of law. Therefore, the October Quotation, which should never have been issued, would fail if he were to take legal action.

- He would like the delays by Mercer investigated. The main issue was the Trustees and Mercer were not communicating and this caused delays that resulted in the guarantee period of the February Quotation expiring.

- If he was not transferring the DB element, as stated by Mercer, why would his IFA have asked for an extension to the guarantee period of the February Quotation? The first blackout added to the delays.

- A letter from the Trustees dated 19 February 2015, detailed the shortfall in the Plan. In his role as Managing Director of the Company, he approved additional funding of £62,500 per month to make up the shortfall. This was another reason for transferring his benefits out of the Plan.

- The root cause of his complaint was all the delays caused by Mercer and the Trustees, that resulted in the guarantee period of the February Quotation expiring.

Mercer's Position

42. Mercer repeated some of the points it had made in its letters of 15 June 2018 and 27 August 2018. In addition, Mercer said:-

- The CETV quotations Mr Y's IFA requested in June 2016 and February 2017 were issued within statutory timescales. It disagreed with Mr Y's statement that after many requests for information about the transfer, nothing happened.

- The blackout did not hinder Mr Y’s ability to make progress in assessing whether or not he wished to transfer the DB element. Mr Y had not made it aware of any queries outstanding at the end of the guarantee period of the February Quotation, that prevented him from deciding whether to transfer the DB element from the Plan.

- In an email from the IFA to Mercer on 27 October 2017, the IFA said:

  “With regard to the [DB element], the original CETV was issued to us in February 2017, however we focused on the DC [element] first.”

- Having made these points to Mr Y, it did not receive any challenge or dispute in relation to them.

- The February Quotation expired in May 2017, so when Mr Y requested a CETV of the DB element, a new quotation had to be calculated. The October Quotation was sent to Mr Y within statutory deadlines. The CETV of the DB element had reduced from £1,008,112 in the February Quotation to £967,848.37 in the October Quotation because of: (i) the change of Mr Y’s age; (ii) changes in market conditions; and (iii) changes in the assumptions underlying the transfer value basis.

- Mr Y noted the Company contributions of £62,500 per month that he approved as managing director of the Company. These payments were made to the Plan as set out in the Schedule of Contributions agreed following the 31 December 2013 actuarial valuation. These contributions were still in place and the existing recovery plan allowed for these to be paid until May 2029. CETVs were paid in full and not reduced for underfunding in the Plan.

- In his submissions to the Pensions Ombudsman’s Office (**TPO’s Office**), Mr Y said that the Trustees obtaining legal advice on whether they had a duty to increase his transfer value constituted “bullying”. Mercer did not understand this. The Trustees obtained legal advice to simply ensure they fulfilled their legal obligations to Mr Y (and other members of the Plan) in how they responded to his complaint and to reassure him that they had done so. At no stage did the Trustees’ legal advisers make direct contact with Mr Y or his representatives.

- While its letter to Mr Y dated 15 June 2018 apologised for delays, the letter explained the reasons for these, such as the revision of the transfer value basis, and crucially that it had assessed there was no basis to revisit the calculation of his CETV. The letter also provided a detailed rationale to justify that conclusion.

- Mr Y believed the calculation method used for the October Quotation reflected the basis that was considered in the BT court case. The BT court case centred on changing the inflation measure for calculating pension increases from the Retail Price Index to the Consumer Price Index. However, the indices underlying the various inflation linked assumptions for the Plan, were the same for both the February and October Quotations.

- After considering the case and the legal advice received, the Trustees concluded that there was no basis for any adjustment to the transfer value provided to Mr Y in respect of the transfer of the DB element.

Adjudicator's Opinion

43. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Mercer or the Trustees. The Adjudicator's findings are detailed below.

44. The IFA requested a CETV of Mr Y's benefits in February 2017 and Mercer issued the CETV to the IFA within the same month. The February Quotation contained details of the CETV for both the DB and DC elements of Mr Y's benefits, and it was guaranteed for three months.

45. The Occupational Pensions Schemes (Transfer Values) Regulations 1996[1] (**the Regulations**), prescribes that a CETV must be guaranteed for a period of three months. The expiration date of the CETV for both the DB and DC element of Mr Y's benefits was clear on the February Quotation. The Adjudicator appreciated that the IFA had asked Mercer for an extension to the guarantee period of the February CETV, but the Trustees did not agree to this request. The Adjudicator was of the view that there was no maladministration by the Trustees in not agreeing to extend the guarantee period of the February Quotation, as there was no legal requirement for them to do so.

46. The exchanges between the IFA and Mercer, between February 2017 and May 2017, confirmed that Mr Y was only intending to transfer the DC element at that time. The Adjudicator had not seen any evidence that after Mercer had sent the February Quotation to the IFA:

    - Mr Y or the IFA had informed Mercer that Mr Y also intended to transfer the DB element;
    - Mr Y or the IFA requested additional information from Mercer concerning the DB element; or
    - Mercer delayed in responding to Mr Y or the IFA in this regard, and this delay resulted in Mr Y not being able to transfer the DB element before the expiration of the guarantee period of the February Quotation.

47. In the Adjudicator's view, as the IFA and Mr Y had focused on the transfer of the DC element first, the IFA should have discussed with Mr Y the consequences of not transferring the DB element prior to the expiration of the guarantee period of the

[1] https://www.legislation.gov.uk/uksi/1996/1847

February Quotation. The Adjudicator had not seen any evidence that the IFA had done so.

48. As the guarantee period for the February CETV had expired, it was reasonable for Mercer to recalculate Mr Y's CETV of the DB element, following contact from the IFA in August 2018.

49. The Adjudicator appreciated that Mr Y was disappointed that the CETV of the DB element in the October Quotation was lower than the CETV of the DB element in the February Quotation. However, the Trustees were permitted, from time to time, after consulting with the Plan's actuaries, to amend the basis on which CETVs should be calculated.

50. It was the Adjudicator's view that it was unfortunate that the updated calculation basis was amended at the time that the IFA requested a new CETV of the DB element. But the CETV being reduced did not result from any maladministration by Mercer or the Trustees.

51. It was also the Adjudicator's view that there were no undue delays by Mercer or the Trustees between February and May 2017, that prevented Mr Y from transferring the DB element at the time that he transferred the DC element.

52. The Adjudicator appreciated that there was a delay between when Mr Y requested a new CETV of the DB element in August 2017 and when it was issued in early November 2017. However, this delay was due to the second blackout and not because of any maladministration by Mercer or the Trustees. Further, this delay was after the expiration of the February Quotation, so it did not have an impact on Mr Y's ability to transfer the CETV of the DB element of the February Quotation.

53. The Adjudicator noted Mr Y's comments concerning the underfunding of the Plan and the basis used to calculate CETVs. The Adjudicator was satisfied with Mercer's explanations in this regard.

54. Regarding Mr Y's comments about members not being notified of the change in the calculation basis for CETVs, it was the Adjudicator's view that there was no maladministration by the Trustees or Mercer in this regard. This was because there was no legal requirement for trustees or administrators to inform members every time the calculation basis for CETVs was amended.

55. Mr Y did not accept the Adjudicator's Opinion and in response said:-

- If, after receipt of the February Quotation, he had instructed Mercer and his IFA in writing to complete the transfer within the three-month time-frame, and this was documented and traceable, he would not have lost £41,000. His mistake was stating this verbally to his IFA.

- His IFA made little progress with Mercer because of delays. It was because of these delays that his IFA focused on transferring the DC element of his benefits. The DC element of his benefits was seen as the simple part to transfer.

- The root cause of his complaint was the delays caused by Mercer. TPO also incurred delays trying to get information from Mercer.

56. As Mr Y did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points raised by the Mr Y.

Ombudsman's decision

57. Mr Y asserts that he has suffered a financial loss because of the delays by Mercer when he was trying to transfer his benefits from the Scheme. Mercer refutes Mr Y's assertions and says that prior to the expiration of the guaranteed period of the February Quotation, the IFA confirmed that Mr Y only wished to transfer the DC element of his benefits.

58. I have not seen any evidence that the IFA or Mr Y informed Mercer or the Trustees, after receipt of the February Quotation, that Mr Y also intended to transfer the DB element at that time. Neither Mercer nor the Trustees could assume this was Mr Y's intention, without his instruction.

59. By its own admission, the IFA confirmed that it focused on the DC element transfer first. Neither Mercer nor the Trustees can be held responsible for any financial consequences Mr Y incurred as a result of the IFA's decision to do so.

60. After carefully considering the information that all parties to the complaint have provided, I do not find that there were any undue delays by Mercer or the Trustees that prevented Mr R from transferring the DB element at the time he transferred the DC element.

61. As the guarantee period of the February Quotation had expired by the time Mercer received confirmation that Mr Y wished to transfer the DB element, Mercer recalculated the CETV. This does not amount to maladministration by Mercer or the Trustees.

62. It is unfortunate that the recalculation of the CETV for the DB element coincided with the second blackout, and that this meant it could not be completed until the end of October 2017. Nonetheless, this was not due to maladministration by Mercer or the Trustees.

63. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
24 May 2022