

Ombudsman's Determination

Applicant	Mr N
Scheme	BT Pension Scheme (the Scheme)
Respondents	BT Pension Scheme Trustees Limited (the Trustee)

Outcome

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

Complaint summary

3. Mr N has explained that when he decided to transfer out of the Scheme, he was medically unfit to do so. The Trustee has allowed him to transfer back into the Scheme, however Mr N is unhappy with the pension he would now receive. Mr N would like to receive a similar pension to the one he was previously entitled to. He also contends that he should have been able to cancel the transfer when he realised his error.

Background information, including submissions from the parties

4. On 1 January 2017, Mr N was injured during a skiing accident.
5. On 9 January 2017, Mr N, a deferred member of the Scheme, received a letter from the Trustee setting out the transfer value of his Scheme benefits. The letter included a copy of the Transfer guide.
6. On 23 February 2017, Mr N completed the Transfer Out Acceptance form.
7. On 7 March 2017, Accenture (**the Administrator**) emailed a copy of the financial advice declaration form to Capital Wealth Partners (**the IFA**).
8. On 13 March 2017, Mr N had an operation on his leg and was prescribed opiates and blood thinners.
9. On 16 March 2017, the IFA chased the status of the transfer with the Administrator.

10. On 17 March 2017, the Administrator contacted the IFA to return the Financial Advice Declaration form. The Administrator explained that the form was completed incorrectly and needed to be completed again. The form stated that it should be completed, "by the member after completion of the declaration above by the authorised adviser." The form was originally completed by Mr N on the 7 March 2017 and by the IFA on the 8 March 2017, i.e. in the wrong order.
11. On 19 March 2017, Mr N was made redundant from his current position at Barclays Bank.
12. On 20 March 2017, Mr N signed the Financial Advice Declaration form again. This time the IFA had completed the form on 17 March 2017, prior to Mr N signing it.
13. On 29 March 2017, Mr N called Suffolk Life to check whether the funds had been transferred.
14. On 31 March 2017, Mr N was transferred out of the Scheme.
15. On 6 April 2017, Mr N emailed the Administrator explaining his regret following the completion of the transfer. He explained he was made redundant on 19 March 2017 from a job he hoped to remain in until retirement at 60. He also explained that he was not in the right state of mind when the transfer was made, due to the operation on his leg and the medication he was prescribed. He requested confirmation of whether the Trustee would accept a reversion request based on his circumstances.
16. On 10 April 2017, the Administrator responded and explained that the query had been sent to the Trustee.
17. On 11 April 2017, Mr N emailed the Administrator explaining that he no longer wished to explore the option of reversing the transfer. He said that he had reached this decision following a meeting with his IFA and Investment manager
18. On 17 August 2017, Mr N wrote a letter of complaint to the Trustee. He explained he was unhappy with the valuation and the lack of clarification on how the transfer value was calculated. He also said he was not sure that the cash equivalent transfer valuation (**CETV**) complied with Government legislation regarding fair valuation.
19. On 16 October 2017, Mr N sent another letter of complaint to the Trustee requesting a reversal of the decision to transfer out of the Scheme.
20. On 21 December 2017, the Trustee responded to Mr N's complaint and provided him with a detailed breakdown of how his transfer was calculated. The Trustee acknowledged that this could have been sent to Mr N sooner and an apology was given. The Trustee explained that the correct procedure had been followed when the transfer out was made and a reversal would not be granted.

21. On 12 January 2018, Mr N appealed the decision made by the Trustees.
22. On 20 March 2018, Mr N wrote to the Trustee thanking the Trustee for placing the second stage of his complaint on hold. His letter included a report from his psychiatrist, a letter from his surgeon and a statement from his IFA. His psychiatrist explained, that when he saw Mr N on 15 March 2018, Mr N had an 18-month history of low mood and anxiety. His surgeon, Mr Calder, confirmed that the medication he was on following his injury, combined with his anxiety and his surgery, could have contributed to a lack of judgment. Mr N's IFA confirmed he had no knowledge of Mr N's medical conditions at the time the pension transfer had occurred.
23. On 21 May 2018, the Trustee issued its second response to Mr N and confirmed that the discretions committee had decided to allow Mr N permission to transfer his funds back into the Scheme.
24. In July 2018, Mr N received the valuation for the transfer back into the Scheme. He was unhappy with the new Scheme benefits he had been quoted and requested that he be allowed to join the Scheme as though he had not transferred out. He also explained that he should only be penalised for being absent from the Scheme for 12 months.
25. Unhappy with the values provided, as they showed that his benefit entitlement had reduced from the date of his transfer; he felt he was being unfairly punished, so he bought the complaint to this service. Mr N has also raised some further issues concerning the procedure followed by the Trustee when the transfer took place.

Adjudicator's Opinion

26. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - The Adjudicator noted that according to the Scheme transfer guide the correct procedure had been followed and the necessary forms had been completed when Mr N decided to transfer out of the Scheme.
 - The reason the financial advice declaration form was returned to Mr N was that it was signed in the incorrect order, and not because the advisor was unqualified.
 - During the transfer process neither the Trustee nor Mr N's IFA were aware of Mr N's medical condition and therefore could not have taken this into consideration.

- Mr N referred to Note 8 of the transfer contract which stated that, “The transfer will be deemed to have been fully accepted by the new pension provider if the payment is kept for more than 14 days following the expected credit date.” Mr N thought that this was to allow a cooling off period. The Adjudicator did not agree and said it did not set out or imply an entitlement for Mr N to cancel the transfer. She also referred to the transfer guide which said, “it isn’t possible to reverse the transfer arrangement without special dispensation from the Scheme Trustee.”
 - The Adjudicator acknowledged that Mr N had emailed the Administrator on 6 April 2017 to enquire about a reversion. However, she also identified an email on 11 April 2017, that Mr N had sent, explaining that he no longer wished to explore a reversal of the transfer.
 - The Trustee had exceptionally allowed Mr N to transfer back into the Scheme and had demonstrated that it had acted in accordance with the Scheme rules when making the transfer-in offer to Mr N. The Adjudicator confirmed that the Scheme rules do not allow for a transfer out to be reversed without the Trustee exercising its discretion.
 - Mr N did not face delays during the Scheme’s IDRP. It took longer for Mr N to receive a stage two response, as he was permitted time to gather supporting evidence and reports.
27. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr N for completeness.
28. Churchill Stone Limited, a company with a background in dispute resolution, adjudication and mediation, on behalf of Mr N, responded to the Adjudicator’s Opinion. It said:
- The Trustee did not notify Mr N that Mr Ogden was not qualified to provide transfer advice and this casts doubt on the safety of the decision to allow the transfer to proceed.
 - They agree that the Trustee was not initially aware of Mr N’s condition, but it was aware when he made calls to cancel the transaction, prior to receipt of funds by the receiving bank account for Suffolk Life, and by the time the request to reverse the transfer was sent to the technical team on 10 April 2017.
 - Mr N had contacted Suffolk Life prior to it receiving the funds. He immediately contacted the Trustee, and, therefore, arrangements to cancel the transfer should have been made.

- Mr N is rightly of the opinion that he had 14 days in which the transfer could be cancelled and did so within that timescale, in relation to Note 8 of the transfer contract.
- The Trustee is penalising Mr N by offering a scheme in which the benefits offer an overall reduction of 30% of the pension payable at the age of 60.
- The Trustee should explain the calculations in a clear and transparent document and explain why Mr N cannot be offered a fair deal.

29. In response to Churchill Stone's comments the Trustee said:

- It is required to check that the member has received appropriate independent advice, but it has no obligation to look behind the financial advice Mr N may have been receiving at the time.
- It considers it has met the required check by Section 48 of the Pension Schemes Act 2015.
- It complied with Mr N's request to transfer out of the Scheme in accordance with its legislative obligations and, on the evidence available to the Trustee at the time, it acted properly in doing so.
- The wording in the transfer guide says, "Once a transfer has been paid, it is not possible to reverse the arrangement without dispensation from the Trustee," and this reflects the Pension Schemes Act 1993. The Act broadly states that the trustees obligation to provide the member with benefits is extinguished.
- The first time Mr N contacted the Scheme was on 6 April 2017, after the transfer had been completed.
- It sought actuarial advice prior to making the transfer in offer to Mr N and it is in line with its obligations under the Scheme's rules.

Ombudsman's decision

30. The Trustee has demonstrated that it had acted in accordance with the Scheme Rules and overriding legislation, and also, that the correct process was followed when Mr N transferred out of the Scheme. The Trustee fulfilled its obligations under section 48 of the Pension Schemes Act 2015 and confirmed that Mr N had sought advice from a suitably qualified adviser before the transfer commenced.
31. The Scheme rules do not allow for the cancellation of a transfer without the Trustee exercising its discretion. Mr N can only reverse the transfer by transferring back in to the Scheme. As the Rules state, "The Trustees will

provide such benefits in respect of the pension concerned as they decide are appropriate after considering advice from the Actuary.” The Trustee is under no obligation to provide Mr N with a full breakdown of how its transfer-in offer has been calculated.

32. I find that the Trustee has properly exercised its discretion by allowing Mr N to transfer back into the Scheme. It is open for Mr N to decide whether he accepts the benefits offered.
33. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
19 March 2019