

Ombudsman's Determination

Applicant	Mr T
Scheme	Old British Steel Pension Scheme (the OBSPS)
Respondent	Open Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr T's complaint.

Complaint summary

2. Mr T has complained that he should have been paid interest for the time it took to complete his transfer-out of the OBSPS. The OBSPS closed to any future accrual of benefits on 31 March 2017, and Mr T transferred-out on 5 March 2018. Mr T has complained that he should have received interest for this period.

Background information, including submissions from the parties

3. On 31 March 2017, the OBSPS closed to any future accrual of benefits. As a result, Mr T became a deferred member of the OBSPS.
4. On 21 June 2017, Mr T applied for a cash equivalent transfer value (**CETV**) quotation.
5. On 21 July 2017, Mr T was sent a CETV quotation which valued his benefits at £645,676.11. Because the OBSPS had insufficient assets to pay full transfer values, the CETV quotation included an underfunding reduction of 8%.
6. On 18 September 2017, Mr T was sent a second CETV (**the Second CETV**) which said that the transfer value had increased to £666,730.76. The increase was a result of Tata Steel paying funds into the OBSPS, which reduced the underfunding reduction from 8% to around 5%. The Second CETV was guaranteed until 11 December 2017.
7. On 20 December 2017, Mr T signed the discharge form accepting the Second CETV. All relevant paperwork, including evidence that independent financial advice had been taken (**the Advice Letter**), was then sent to the OBSPS administrator on 28 December 2017.

8. The Advice Letter contained the incorrect Financial Conduct Authority (**FCA**) authorisation number. This was corrected on 7 February 2018, when Mr T's financial advisor wrote to the OBSPS administrator with the correct FCA authorisation number.
9. On 5 March 2018, the transfer payment was settled in full.
10. Mr T complained about the level of service he received during the transfer-out process. He also requested confirmation of whether his benefits had increased since 31 March 2017, the date the OBSPS closed to the future accrual of benefits.
11. On 27 June 2018, the Trustee issued its response under stage one of its internal disputes resolution procedure (**IDRP**). It said that it had completed the transfer within the statutory timeframes but accepted that the OBSPS administrator did not provide the expected level of service. It apologised for the service provided.
12. On 31 August 2018, the Trustee issued its response under stage two of its IDRP. It rejected the complaint and said that the transfer was completed within six months of the Second CETV, so the delay did not constitute maladministration. It said that the benefits were increased:

“in accordance with the rules of the Scheme and the requirements of overriding law, up to the date of your [Mr T's] transfer out, broadly in line with inflationary increases but subject to certain caps.”

Mr T's position

13. He accepts that the transfer was completed in accordance with the statutory timeframe but felt that it could have been dealt with more professionally. However, he remained dissatisfied with how his benefits were treated after 31 March 2017, when the OBSPS closed to the future accrual of benefits.

The Trustee's position

14. It had reviewed the Definitive Trust Deed and Rules (**the OBSPS Rules**), and was satisfied that Mr T's benefits did not require any revaluation increases. Rule 34 (see Appendix) sets out the requirement for pension increases. Rule 34(2) and 34(2B) outline requirements for the revaluation of increases to be applied for deferred members, once their benefits are put into payment. Rule 34(1) and Rule 34(1A) require yearly increases to be applied to members' pensions in payment, annually on 1 April.
15. Mr T became a deferred member on 1 April 2017; therefore, his annual pension increase would have been due on 1 April 2018. However, Mr T transferred his benefits prior to this date, so he was not entitled to the revaluation increase. There was no statutory requirement to provide a revaluation increase. This was because statutory minimum requirements only require a revaluation increase where there has been at least one complete year of deferment. This would not apply to Mr T, as he transferred out less than a year after becoming a deferred member.

Adjudicator's Opinion

16. Mr T'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:-

- Mr T became a deferred member on 1 April 2017. On 5 March 2018, within a year of becoming a deferred member, he transferred out of the OBSPS. Rule 34(2) and Rule 34(2B) of the OBSPS Rules outline the circumstances where deferred members would receive increases to their benefits. It is clear that the OBSPS Rules guarantee that deferred members' benefits will be increased once they are put into payment. Rule 34(1) and Rule 34(1A), confirm that benefits should be increased on the 1 April each year.
- According to the OBSPS Rules, Mr T would be entitled to an increase of his benefits once they were put into payment. Once in payment, the Trustee would have increased Mr T's benefits in accordance with Rule 34. As a result, the first increase that would have been due would have been payable on 1 April 2018. By this date, Mr T had already transferred out his benefits, so he was not entitled to receive an increase.
- With regard to the service Mr T received, the Trustee has apologised and said that in normal circumstances it would have expected the OBSPS administrator to provide a better service. The Trustee said that when Mr T requested the transfer, the OBSPS administrator was dealing with unprecedented levels of member engagement. Both Mr T and the Trustee accept that the transfer was paid within the statutory timeframe.
- The Trustee has apologised for the slow speed in which the transfer was completed, and the Adjudicator was of the opinion that an Ombudsman would consider this an appropriate resolution.

17. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

18. Mr T provided his further comments which do not change the outcome. He has argued that:

- The Trustee cannot say that he would have received increases had he remained a member until April. Had he remained a member until this date, he would not have been able to transfer-out.
- When Mr T was provided with the second CETV he was told that the Trustee had changed its calculation method. Mr T said this implied that interest had been added, which was not the case.

- The Trustee cannot blame the delay on the incorrect reference supplied by the financial advisor. The reference was corrected immediately, so it cannot be said to have caused the delay.
 - Whenever Mr T requested updates, he could not get through. He said that this caused stress and anxiety. He feels that the Trustee's apology is not an adequate response.
19. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr T for completeness.

Ombudsman's decision

20. The OBSPS Rules do not entitle Mr T to an increase in benefits. Rule 34(2) states that Mr T's deferred benefits should be increased once they are put into payment. Rule 34(1) specifies that increases should be calculated on the 1 April each year; therefore, the first increase should have been calculated on 1 April 2018. By this date, Mr T had already transferred-out his benefits, so, he was not entitled to any increase.
21. Mr T has argued that he would not have been allowed to wait until the increase was applied as his option to transfer would have ceased by 1 April 2018. However, when Mr T applied to transfer his benefits in December 2017, he accepted the transfer value that was recorded on the CETV. As a result, I do not accept his argument that he expected increases to be applied.
22. Another argument Mr T has made is that the Trustee implied that the increase in value of the second CETV was due, in part, to interest. He said that the Trustee said so much in its stage two IDR. I disagree, the Trustee explained that the second CETV, "...was provided free of charge and intended to let members know that the transfer value basis had changed." Whilst it may have been beneficial for the Trustee to clarify why the CETV increased, I do not agree that it suggested that the increase was due to interest. I do not find that the Trustee provided misinformation.
23. Mr T has said that the Trustee should not be able to blame his IFA for the delay in completing the transfer. Mr T accepts that his IFA provided an incorrect reference but said that this was corrected immediately. Whilst there may have been a delay the Trustee completed the transfer within the statutory timescales, so I do not believe that any delay constituted maladministration.
24. When Mr T requested updates on his transfer, he found it hard to get through to the Trustee. He said that this caused stress and anxiety. The Trustee has agreed that the OBSPS administrator did not provide the standard of service that it should have done; however, it said that this was due to an unprecedented level of member engagement. I accept that this would have caused Mr T distress and inconvenience, however, I do not agree that it was sufficiently significant to warrant an award, the apology was a reasonable response to the complaint.

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25. I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
27 March 2020

Appendix

Rule 34 of the Scheme Rules

34. PENSION INCREASES

- (1) On 1 April in each year the annual rate of every pension, annuity and allowance which was in payment before that 1 April, so far as it is attributable to Pensionable Service before 1 April 2016, shall be increased by the percentage ratio (calculated to the nearest one place of decimals) by which the index figure of the Index for the month of January in the year in which the increase takes effect exceeds the index figure of the Index for the month of January in the immediately preceding year but this increase shall be:
 - (a) subject to Rule 2 of the Second Schedule insofar as the pension is attributable to Pensionable Service before 1 April 2008; and
 - (b) limited to four per cent insofar as the pension is attributable to Pensionable Service after 31 March 2006 and before 1 April 2012; and
 - (c) limited to three per cent insofar as the pension is attributable to Pensionable Service after 31 March 2012 and before 1 April 2016.
- (1A) On 1 April in each year the annual rate of every pension, annuity, and allowance in payment before that 1 April, so far as it is attributable to Pensionable Service on and from 1 April 2016, shall be increased by the minimum amount required by Sections 51 to 55 of the 1995 Act (and regulations made under those sections).
- (2) So far as it is attributable to Pensionable Service before 1 April 2016, the annual rate of every pension which is prospectively payable to any Deferred Pensioner shall, when it comes into payment, be increased to the annual rate at which it would have been payable had it:
 - (a) come into payment on the date he ceased to be a Member; and
 - (b) been increased as required by section 84 of the 1993 Act (but subject to Rule 3 of the Second Schedule).
- (2B) So far as it is attributable to Pensionable Service on and from 1 April 2016, a pension prospectively payable to any Deferred Pensioner shall when it comes into payment be increased as required by section 84 of the 1993 Act.
- (3) The annual rate of every pension which is prospectively payable to a Postponed Pensioner who has reached Normal Pension Age but has not retired shall, when it comes into payment, be increased to the rate at which it would have been payable had such Postponed Pensioner retired at his Normal Pension Age (or where the Postponed Pensioner became a Postponed Pensioner after Normal Pension Age had he retired on the date he became a Postponed Pensioner). This increase shall

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be in addition to any increase which the Actuary may certify in accordance with Rule 13.

- (4) There shall be excluded from the operation of this Rule Guaranteed Minimum Pensions payable in accordance with Rule 35.