

Ombudsman's Determination

Applicant	Mr T
Scheme	Barloworld UK Pension Scheme (the Scheme)
Respondents	Barloworld Pension Trust Limited (the Trustee) JLT Benefit Solutions Limited (the Administrator)

Outcome

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

Complaint summary

3. Mr T complains that two months after submitting completed transfer paperwork, he was advised that the transfer value illustration was incorrect in that his Scheme benefits had been overstated. He says that he has been unable to complete the transfer as he does not know the correct transfer value. As a result of this, he has lost investment growth that he would have received from his new provider and his retirement plans and future decisions have been put on hold.
4. Mr T would like to be put in the position he would have been in had the correct transfer value been paid in July 2017. He would like compensation for himself and his current independent financial adviser (**the current IFA**).

Background information, including submissions from the parties

5. In February 2015, the Administrator wrote to Mr T's previous independent financial adviser (**the previous IFA**) in response to a request for a transfer value quotation. It confirmed Mr T's Scheme benefits had a transfer value of £214,992.
6. In September 2015, the Administrator provided the previous IFA with an update of Mr T's deferred pension (**the September 2015 statement**). It confirmed that when he left the Scheme on 29 February 2008, he had a deferred pension of £6,765.90 per annum and a supplementary pension of £705.94 per annum. It confirmed his deferred pension as at 21 September 2015 was £8,447.56 per annum and his supplementary pension was £868.92 per annum.

7. In March 2017, Mr T was provided with incorrect information about his deferred pension. The Administrator sent him a letter confirming that his deferred pension when he left the Scheme on 29 February 1986 was £12,182.02 per annum and his supplementary pension was £705.94 per annum. It confirmed his deferred pension as at 9 March 2017 was £15,256 per annum and that his supplementary pension was £875.04 per annum.
8. Mr T and his previous IFA requested a transfer pack from the Administrator. On 19 July 2017, the Administrator sent a statement (**'the July 2017 statement'**) showing Mr T's Scheme benefits had a transfer value of £463,487.45 based on a pension at date of leaving of £12,182.02. The transfer value was guaranteed until 14 October 2017.
9. On 15 September 2017, the Administrator wrote to Mr T's home address, and to his previous IFA, to inform him that the July 2017 statement was incorrect. It confirmed Mr T's benefits had a transfer value of £267,644.
10. Mr T tried to proceed with the transfer based on the July 2017 statement. On 25 September 2017, the Administrator received discharge paperwork from a new pension provider. A document sent with the paperwork showed that the current IFA had provided Mr T with transfer advice. However, a new letter of authority for the current IFA was not provided.
11. The previous IFA called the Administrator in October 2017. Following the call the Administrator wrote to the previous IFA and said that:-
 - As discussed in a recent phone call, it had sent a letter to explain the transfer value illustration provided in July was incorrect. It enclosed a copy of the letter dated 15 September 2017.
 - The incorrect transfer value illustration had been provided "due to an incorrect update applied to the member record causing the deferred pension to be double counted."
 - It was prepared to provide a detailed transfer value, but the approximate correct transfer value was £250,000. It had provided this figure as it may affect the advice provided to Mr T.

The previous IFA contacted the current IFA to share the information it had received. In November 2018, the current IFA complained to the Administrator about the incorrect transfer value illustration being provided.

12. In January 2018, the current IFA provided a letter of authority (**LOA**) to the Administrator.
13. On 20 February 2018, the Administrator provided a new transfer value illustration, of £265,891, to the current IFA. This was guaranteed until 8 May 2018.

14. On 10 April 2018, the Administrator responded to the current IFA's November letter and said that:-

- It had provided correct transfer value and deferred pension information in February and September 2015.
- Although incorrect information had been provided, Mr T should have been aware of the discrepancies and he should have sought clarification.
- The current IFA had confirmed that Mr T had not relied on the incorrect transfer value illustration to make any financial commitments.
- The Trustee administers the Scheme in accordance with the Scheme rules and misquoted benefits do not create an entitlement.
- The disclaimer on the transfer value illustration says that the final benefits payable will always be subject to the Scheme rules.
- It offered £750 in recognition of the distress and inconvenience caused to Mr T.

15. Mr T did not accept the offer made by the Administrator. The current IFA on his behalf complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), saying that:-

- It had advised Mr T based on the valuation that had been provided by the Administrator in July 2017.
- The Administrator should not have contacted the previous IFA to inform it the transfer value illustration was incorrect.
- It only become aware that the transfer value illustration was incorrect when the previous IFA told them.
- It did not receive a response to its letter of complaint sent in November 2017 until April 2018, even though it had provided a letter of authority in January 2018.

16. The Trustee responded saying that:-

- The Administrator had delayed in communicating with the current IFA.
- The Administrator was correct in writing to the previous IFA as at the time it did not have authority to communicate with the current IFA; It had only received a letter of authority from the current IFA in January 2018.
- The Administrator had written to the previous IFA as soon as it had become aware of the error.

- Mr T could have questioned the error given that the correct transfer value information had previously been provided.
- In recognition of the distress and inconvenience caused to Mr T it increased the £750 offered by the Administrator to £1,000.

17. During our investigation the Administrator confirmed the correct transfer value in July 2017 was £266,921.

The Pensions Ombudsman's position on the provision of incorrect information

18. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, for example, that given in retirement quotes or transfer value quotes. A member is only entitled to receive the benefits provided for under the scheme rules.
19. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have made a decision in the expectation of receiving the higher benefits which they would not otherwise have made, such as retiring early. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.
20. The above sets out the Ombudsman's views very generally on the application of negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

21. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Administrator. The Adjudicator's findings are summarised below:-
- The Trustee and the Administrator had agreed that there were unnecessary delays in responding to the current IFA and that Mr T was provided with incorrect information.
 - The Administrator had not received a LOA from the current IFA until January 2018 and therefore it was not wrong to contact the previous IFA with the corrected transfer value information.
 - Mr T was only entitled to the correct benefits in accordance with the Scheme rules.

- Mr T had been provided with the correct transfer value in 2015 and therefore he should have reasonably been aware that the transfer value received in 2017 was incorrect.
- Mr T had received the correct transfer value in September 2017 prior to the Administrator receiving the transfer request from the receiving scheme. Mr T had not proceeded with the transfer based on the correct figures.
- Mr T had not made any irreversible financial commitments based on the incorrect information he had received.
- The Adjudicator thought that the £1,000 offered by the Trustee in recognition of providing Mr T with the incorrect information and the delays in responding to the current IFA was sufficient.

22. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided 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 T for completeness.

23. The following comments were provided by Mr T.

- He was not aware of the transfer value quotation in February 2015 and therefore he would not have been able to compare it with the incorrect figures provided in 2017.
- He had received details of his deferred pension in September 2015.
- Neither himself or his previous IFA had received any communication on 15 September 2017 informing them that the transfer value provided in July was incorrect. The first indication that the transfer value was incorrect was a letter sent to the previous IFA in November 2017.
- The Adjudicator had said that when the previous IFA contacted the Administrator in October 2017, it was told the correct transfer value was in the region of £250,000. He questioned why this figure was mentioned if it had been confirmed that the correct transfer value was £267,644 in September 2017.
- The current IFA had only provided a LOA in January 2018 as until then the Administrator had not questioned its authority. The current IFA had spoken to the Administrator numerous times before being told that it would need to provide a LOA. The current IFA had considered that the transfer paperwork showing it had provided Mr T with advice would have been enough to show that it was representing him.
- He had not acted upon the transfer value quoted on 20 February 2018 of £265,891 as his complaint was still being investigated. A response to his complaint was not received until 10 April 2018.

- The Administrator had told us that the correct transfer value in July 2017 was £266,921. However, the transfer value that was apparently provided in September 2017 was £267,644. Both values could not be correct.
- There had not been an opportunity to transfer benefits based upon the correct value as at July 2017. The correct transfer value as at July 2017 had only been confirmed in the Adjudicator's letter of 26 June 2019.
- He had faced financial loss and should be compensated for the investment growth that would have been earned had the transfer been made in July 2017 up until the date the transfer is finalised.
- His current IFA had contacted his previous IFA who had confirmed that they had not received the correspondence dated 15 September 2017. The previous IFA's records showed that the Administrator had called on 31 October 2017 to let it know the transfer value illustration was incorrect. The previous IFA questioned why the Administrator would call if a letter had been sent on 15 September 2017.

Mr T has requested an oral hearing with the Ombudsman.

Ombudsman's decision

24. I have considered Mr T's request for an oral hearing which he considers necessary because there are differing accounts of a particular material event i.e. the receipt of the letters to himself and his previous IFA dated 15 September 2017. I do not find that an oral hearing is necessary to resolve that issue, because my conclusions in this case do not turn on whether this letter was received. They turn on whether Mr T can prove financial loss flowing from the error made by the Administrator when it sent the July 2017 CETV.
25. The starting point is that Mr T is only entitled to the correct transfer value, not to the misstated value.
26. Mr T maintains that he has suffered financial loss because he has never had an opportunity to accept a correct CETV as at July 2017. I do not agree.
27. The July 2017 figure was undoubtedly wrong. I acknowledge the dispute about whether the clarification in the September 2017 letter was actually received. In any event I do not consider that the letter remedied the original failure to provide the correct figure. The correct remedial action at that point in time would have been to reissue the transfer pack and extend the time for acceptance of the corrected figure. That did not happen. I agree that Mr T was not given a proper opportunity to accept the July 2017 transfer value. There was also a delay in responding to Mr T's correspondence in respect of the error. To that extent there was maladministration. However, I am not satisfied that Mr T has suffered investment loss as a result.

28. Investment loss would only flow if Mr T can show that he would have transferred out if he had been given the correct figure in July 2017 and he did not do so because he could not get a correct figure. I do not consider that Mr T can prove that on the balance of probabilities, because he did not transfer out when he received the very similar corrected figures which were later issued.
29. Mr T also had a duty to mitigate any investment loss that he perceived he was incurring. The Administrator provided a new transfer value in February 2018. That transfer value was guaranteed until 8 May 2018. Mr T has said that he was unable to accept that transfer value as a response to his complaint was not received until April 2018. While Mr T was not satisfied with the complaint response, he could have accepted the revised value in order to mitigate any perceived investment loss. He did not do so. Lastly, I have no evidence from which it is possible to tell whether Mr T would have been better off accepting and investing the July 2017 transfer value, as compared to accepting and investing the February 2018 transfer value.
30. In these circumstances I am not satisfied that Mr T can show a financial loss flowing from the incorrect statement issued in July 2017.
31. Mr T is unhappy that the Administrator communicated with his previous IFA. I do not consider that the Administrator was wrong to communicate with the IFA who had provided it with a letter of authority. The onus was on Mr T and his current IFA to ensure that it had provided the Administrator with the necessary documentation showing it acted as Mr T's representative.
32. The Trustee has offered Mr T £1,000 in relation to the distress and inconvenience caused for the delays in corresponding with the new IFA and providing incorrect information in the first place. In this instance, I find that the offer made is reasonable and in line with the award which I would make in the circumstances. Mr T should contact the Trustee if he wishes to accept the offer.
33. Therefore, I do not uphold the complaint.

Karen Johnston

Deputy Pensions Ombudsman
17 March 2020