

Ombudsman's Determination

Applicant	Mrs A
Scheme	Sears Retail Pension Scheme (the Scheme)
Respondents	Trustees of the Sears Retail Pension Scheme (the Trustees), Capita Employee Solutions (the Administrator)

Complaint Summary

Mrs A's complaint against the Trustees and the Administrator is about a delay providing her with a revised cash equivalent transfer value (**CETV**) quotation.

Summary of the Ombudsman's Determination and reasons

The complaint should be upheld against the Administrator because it took too long to provide an invoice in respect of a second CETV upon Mrs A's request.

Detailed Determination

Material facts

1. Mrs A was a member of the Scheme. In June 2017, after obtaining advice from Woodgate Financial Planning (**the Adviser**) about transferring-out, she contacted the Administrator and requested a CETV quotation in respect of her Scheme benefits.
2. In August 2017, the Administrator issued a CETV quotation (**the First CETV**) for £696,000. Under section 48 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the 1996 Regulations**) (see Appendix), the amount was guaranteed for three months. The cover letter to the First CETV said: "If an application to proceed is not received by 30/11/2017... a revised transfer value will not be available free of charge until 12 months from the date of the original request."
3. On 15 November 2017, Mrs A phoned the Administrator and asked for another CETV quotation. On the same day, she e-mailed the Administrator and said: "...This is to confirm that today, I called your pensions helpline and requested another transfer valuation. Can this be processed ASAP to enable me to make a final decision on my pension..."
4. On 16 December 2017, the Administrator e-mailed Mrs A and said:

“Please note that you are entitled to 1 free of charge [CETV] value in a 12 month period. Your next free of charge CETV will be available on [sic] June 2018. If you require a revised CETV we [sic] will have to incur Capita charges plus the Scheme Actuaries’ charges as this will have to be referred to them (Please note that charge will be confirmed upon your decision)... Should you require to receive a CETV please contact us so we can arrange for an invoice to be sent to your home address.”

5. On 18 December 2017, Mrs A phoned the Administrator, confirmed she would pay for another quotation and requested an invoice. On 21 December 2017, she confirmed this by e-mail. Around this time, the Scheme Actuary (**the Actuary**) advised the Trustees to adopt a revised transfer value calculation basis. The Trustee resolved that from 30 January 2018, all CETV quotations would be calculated on the revised basis.
6. On 1 January 2018, the Administrator implemented a blackout for new CETV quotations. That meant no new quotations would be issued until 31 January 2018.
7. On 9 January 2018, Mrs A e-mailed her Adviser again confirming to her that she had decided to pay for a revised CETV quotation. On or around 10 January 2018, the Adviser confirmed this to the Administrator and asked it to issue an invoice.
8. On 30 January 2018, the Trustees formally adopted the new CETV basis. The final substantive paragraph of the minute records “The Trustees...agreed that all CETV... cases are to be calculated in line with the agreed proposals and that WTW are to carry out all calculations (including those that have not been issued to members) with immediate effect. CETV...cases that have been issued and are still within their respective guarantee dates will be honoured”.
9. On 5 February 2018, the Administrator raised an invoice, which was issued to Mrs A on 15 February 2018. On 20 February 2018, Mrs A settled the invoice.
10. From 14 February to 10 April 2018, there were several phone calls - between Mrs A, the Adviser and the Administrator - chasing the revised quotation. On 9 April 2018, the Administrator issued a revised quotation (**the Second CETV**) for £640,000.
11. Following receipt of the Second CETV, Mrs A complained to the Administrator about the reduction in value; the time taken to provide the revised quotation; and, the fact she had to chase the Administrator.
12. From 14 May to 27 June 2018, there were further phones calls - between Mrs A, the Adviser and the Administrator - chasing information and an update. On 5 June 2018, the Administrator responded to the complaint. The key points were: Mrs A did not accept the First CETV by the guarantee deadline, so a further quotation had to be requested; there was a delay - from around 9 January to 15 February 2018 - before an invoice was raised; and, there was a further delay - until 20 April 2018 - until the Second CETV was issued. The Second CETV was lower than the First CETV due to

changes in calculation factors. It apologised that Mrs A had to contact it several times and offered her £250 to resolve her complaint.

13. In July 2018, Premier Pensions Management was appointed Scheme administrator (**the New Administrator**). Due to "difficulties and delays" Mrs N had experienced, the Trustees asked the New Administrator to send her a revised quotation at no cost, and this was issued on 6 July 2018 (**the Third CETV**) for £668,000. Mrs A accepted this, without prejudice to her complaint, then transferred-out her Scheme benefits.
14. In August 2018, the Adviser complained to the Trustees that the Administrator had caused delays and should honour the First CETV. In September 2018, the Trustees responded but did not uphold the complaint. In summary, they said the Administrator had accepted that its service and the delays were unacceptable and had offered Mrs A £250 for any distress and inconvenience caused. But as Mrs A did not apply for the First CETV by the guarantee deadline, there were no grounds for the Trustees to honour it. They had also waived the cost of the Third CETV, which Mrs A accepted.
15. Mrs A remained unhappy. In order to resolve her complaint, she requested redress of £28,000, being the difference between the First and Third CETVs.
16. The Trustees responded to the complaint. In summary, they said that they were not responsible for Mrs A's not accepting the First CETV by the guarantee deadline. And it was reasonable for the Administrator to await Mrs A's agreement to pay for a revised quotation. Therefore, there were insufficient grounds to uphold her complaint.
17. Mrs A provided her further comments. In summary, she said once she agreed to pay for a revised quotation, the normal timescales applied. But the Administrator did not provide the Second CETV within three months of that time. Further, she would have paid for a revised quotation sooner, had the Administrator promptly explained how.

Summary of Mrs A's position

18. Mrs A submits that:-

- The Administrator took five months to provide a new CETV and, during that time, the transfer factors changed, meaning the value decreased by about £54,000.
- She chased the Administrator several times and the Trustees knew its service was poor, hence they changed administrator after the events complained of.
- The Trustees had a responsibility to employ suitable administrators and ensure Scheme members were looked after, which clearly had not happened, therefore both parties were at fault.
- She had to accept a lower transfer value of about £668,000 to ensure the same problems did not re-occur. So, a balancing payment of about £27,600, that is, the difference between the First and Third CETVs, should be paid to her.

- She had never come across a provider that did not allow a second quotation in 12 months. And it was “almost impossible” to complete a “full and proper” transfer analysis in three months.
- The Trustees were happy to provide another quotation if she paid for it. So, their argument, that they could only provide one quotation in 12 months, is invalid; once they approved a second quotation, the timescales in the legislation applied. The Trustees accepted that she confirmed, on 18 December 2017, that she would pay for this and, from then, the time limit was three months, that is, until 18 March 2018. However, the Second CETV was not actually received until 9 April 2018.
- She would have paid for a revised quotation in November 2017, but the Administrator took so long to respond - to explain how to pay for it - that November not December 2018 is a true reflection of when she made her request.
- A pension member should not be disadvantaged by poor scheme administration. By the Trustees’ own admission, the statutory three-month deadline was not met, that is, the Second CETV was not provided until more than three months from when the Trustees agreed to provide it.
- The Administrator’s response of 5 June 2018 admits responsibility for errors and apologises but does not offer to make good the loss she has suffered.
- There is evidence, in the form of call logs, that the whole process took more than five months - that is, from her request of 15 November 2017, to receipt of the Second CETV on 9 April 2018.
- Whenever the Administrator requested anything from her, she responded quickly.
- The New Administrator was able to provide the Third CETV quickly, so she did not understand why the Administrator could not have done the same. Had the New Administrator been in place from the start, a second CETV quotation would have been produced before the blackout, and her complaint would never have arisen.
- Although call centres experience high work volumes, four months is unacceptable. In her experience, average time to issue a CETV quotation is two to four weeks.
- She paid the invoice quickly once received. Notwithstanding the busy Christmas period, which was not a valid excuse for such a long delay, it ought to have been possible to issue an invoice before 1 January 2018 if a revised CETV quotation was requested on 15 November 2017.
- If the Administrator was concerned about postal delays over Christmas, it could have e-mailed the invoice instead. Bank details could also have been provided.
- If a company cannot provide an invoice between 15 November 2017 and 31 December 2017 (or 18 and 31 December 2017), it ought not to be in business.

- Had the Administrator outlined the option of paying for a second CETV quotation, and done so promptly following her e-mail of 15 November 2017, the process could have been initiated and completed before the new factors were adopted.
- Not only did she e-mail the Administrator on 15 November 2017, she also called it. There was no reason to do both if she was not prepared to pay. The reason she needed a new CETV quotation was it was too close to the deadline for the First CETV for any advice to be written and presented. Therefore, the Adviser told her a new one was required.
- It has been suggested that she could not prove she had been disadvantaged, and that she could not prove that the transfer value would have been higher had the Administrator processed her request in a reasonable time. This is unfair because administrators and actuaries have tools to carry out these calculations; she does not. She should not be disadvantaged by this.
- A transfer value could and should have been calculated before commencement of the blackout. Unless it could be proved with certainty, not just on the balance of probabilities, that a transfer quotation could not have been produced before the blackout, she should not be disadvantaged.
- If the Ombudsman is unwilling to uphold the complaint, she should be awarded a higher level of compensation to recognise the length of time the complaint process has taken. She should also receive a refund of the fee for a revised transfer value quotation.

Summary of the Trustees' position

19. The Trustees submit that:-

- In accordance with the 1996 Regulations, the First CETV was guaranteed for three months. But Mrs A did not accept it within the guarantee period, which was not due to any error by them, so there were no grounds to uphold her complaint and pay her the difference between the First and Third CETVs, as requested.
- Nor was Mrs A entitled to receive a further CETV calculated on the same basis as the First CETV, as she had no right to receive a revised CETV until August 2018.
- They agreed that Mrs A could have a revised CETV. But, it was reasonable for the Administrator to delay providing this until Mrs A agreed to pay for it, which she did on 18 Dec 2017. After that, the Administrator processed a revised CETV.
- They were required to calculate the CETV on advice from the Actuary. Therefore, Mrs A had not suffered loss as a result of the change in transfer factors.
- It understands that the Administrator's process required that an invoice, in respect of its fee, be issued before a revised CETV could be generated.

- From 30 January 2018, all CETVs were calculated on the revised basis. What was required before the cut-off date was for a quotation to be issued with a guarantee date before 30 January, that is, even if a request for a CETV had been received before this date (whether a fee was payable), if the quotation was not issued before 30 January, it would have been prepared on the new basis. This was recorded in the meeting minutes in which new transfer factors were adopted.

Summary of the Administrator's position

20. The Administrator submits that:-

- It issued the First CETV on 17 August 2017, guaranteed until 30 November 2017, but no transfer-out application was received by then. So, it had not caused Mrs A to miss the opportunity to transfer-out in line with the First CETV.
- It accepted there was a delay, from around 9 January until 15 February 2018, until an invoice in respect of its fee was raised. It also accepted there was a further delay - from when it received payment on 20 February 2018, until the Second CETV was issued on 20 April 2018. However, this did not cause her a loss.
- The reduction in the CETV was due to changes in calculation factors, agreed between the Trustees and the Actuary to reduce liabilities.
- It is sorry that Mrs A had to contact it several times and had offered her £250 to recognise this and settle her complaint against it and the Trustees.
- Mrs A's call of 15 November 2017 would have gone into a "contact centre environment" due to high workloads at the time. Although Mrs A says she knew she would have had to pay for a revised quotation, there is no evidence, in the call notes, that this was mentioned. Nor could the contact centre have been expected to know that a CETV quotation had previously been provided and that the Scheme would allow a second one if Mrs A agreed to pay the relevant fee.
- It has a service level agreement (**SLA**) for carrying out work, following a phone call, which is five-ten working days, based on the action required. As it was in a "backlog situation", based on the timeline it is unlikely an invoice in respect of its fee would have been paid prior to commencement of the blackout. Further, there were bank holidays over the period, which must be taken into account too.
- Business delays due to high work volumes also have to be taken into account. In addition, the Pension Regulator allows three months for providing this information, which can be extended to six months in extenuating circumstances.
- No "financial expectations" were set with Mrs A during the period in question. After the deadline for the First CETV expired, she was no longer entitled to transfer-out in line therewith. Her request for a revised quotation would always have had to go back to the Actuary to be calculated.

- It should only cover “material distress”, due to the time taken to provide the Second CETV, which it had already done.
- It usually works to a five to ten-day SLA. Sometimes, it refers cases to a different department, eg “management accounts”, for invoices and to the Actuary for the calculation. This adds to the SLA. Considering the time of year, a revised quotation could not have been produced in time to be based on the old factors.
- Mrs A contacted Capita on 15 November 2017. In line with its normal SLAs, on a notional timeline events would have proceeded as follows. First, on 29 November 2017, it would have written to Mrs A asking her to confirm that she was prepared to pay for a revised CETV quotation, that is, within a ten-day SLA.
- Based on how quickly she proceeded, Mrs A would have confirmed, on 1 December 2017, that she was prepared to proceed. Then, it would have sent her request onto management accounts for an invoice to be raised, that is, within a ten-day SLA. On 22 December 2017, an invoice would have been produced and posted, that is, within a five-day SLA.
- By this time, the Christmas period had started therefore the post would have been slower than normal. Based on the “standard seasonal post time” of five days, the invoice would not have been with Mrs A before the end of 2017.
- Rather, had it acted in compliance with its SLAs, then Mrs A would have received a revised invoice by 2 January 2018 at the earliest. But by then, the Scheme was in blackout while the transfer value factors were being updated.
- It also had “reduced staffing levels” during this period, which would have impacted its ability to take payment for invoices during the Christmas period.
- The blackout for providing CETV quotations in respect of the Scheme commenced on 1 January 2018. This lasted until 31 January 2018. It is unsure what happened with CETVs that were requested from the Actuary before the blackout started but had yet to be produced; that would be a question for the Trustees. But based on past experience, the CETV would be issued once the Actuary was able to calculate it and based on the factors prior to the blackout.
- Its SLA for action is five days, depending on the contract and SLA percentage pass. This is an agreement between it and the Scheme Trustees.
- Typically, when a CETV is requested for the first time, it would expect to prepare the information and pass this onto the Actuary within the ten-day SLA. This would then fall into the Actuary’s SLA (which, based on past experience, could be two to eight weeks). It (the Administrator) then has ten 10 days to issue the CETV.
- It would not have been in a position to refer Mrs A’s request to the Actuary before the blackout commenced. Once the invoice was paid, all its SLAs were met.

Conclusions

21. I have considered all the evidence available. Having done so, I am not persuaded by the timeline and reasons the Administrator has provided. I find that the Administrator's delay in responding to Mrs A's request for a second CETV was maladministration.
22. Mrs A first requested a revised CETV quotation on 15 November 2017. The appropriate response to that request would have been to inform her whether the Trustee would allow her to have a second CETV within twelve months and, if so, what it would cost her. Capita's submission that the 15 November 2017 call was handled in a call centre environment does not adequately explain why it took a month to explain the process to Mrs A. It is not reasonable to expect a customer to make good a lack of basic fact finding or access to member records in a call centre to which their query is directed. In any event, even if she was not prompted for the necessary information on the call itself, Mrs A's e-mail of 15 November 2017 made clear what she needed, saying "...I called your pensions helpline and requested another [my emphasis] transfer valuation. Can this be processed ASAP..." Therefore, in the circumstances I think the Administrator was put on notice (a) that Mrs A was asking for a second CETV and (b) that she urgently needed to know how to obtain one.
23. I do not find that there is any reasonable justification - whether in the Administrator's backlog, the time of year or any other factors - for its taking more than a month to provide a member with basic information about the standard process for issuing a second CETV within 12 months.
24. I do not consider that the Administrator has sufficiently addressed its failure to issue the invoice promptly. The Trustees have said (and the Administrator does not dispute) that the Administrator's process required an invoice for its fee to be issued before a revised quotation could be generated. I do not find this process to be unreasonable. Should members change their minds about requiring a revised quotation, scheme administrators could find themselves having carried out a complex calculation without any ability to defray the costs. But this is precisely why it is important for administrators to produce an invoice promptly upon request.
25. I see no reasonable justification for taking from 15 November to 16 December 2017 to outline the Trustees' policy and issue an invoice. That was the substantive work required by the phone call and email which Mrs A made on 15 November 2017. Adopting the Administrator's normal SLA of 5-10 days, I find that an invoice should have been issued no later than 29 November 2017. Adopting Mrs A's actual time to respond, (in the event, an invoice was issued to her on 15 February 2018 and she paid it on 20 February 2018), it is likely that Mrs A would have paid the invoice no later than 4 December 2017. Adopting the Administrator's standard SLA, it should have sent a request to the Actuary within no more than ten working days, that is, by 18 December 2017.

26. However, I do not consider that Mrs A can demonstrate that she has suffered actual financial loss as a result of the delay. There is no basis to contend that she should be entitled to the amount in the first valuation because missing the guarantee deadline for the First CETV was unconnected with the delay which occurred.
27. To prove financial loss, Mrs A would need to show that the Third CETV was lower than a second valuation would have been if it had been issued promptly. There is no evidence which demonstrates that to be the case. I have considered whether but for the delay it is probable that Mrs A would have received a second CETV using the old factors. Bearing in mind the Christmas break and the additional work involved in a change of factors, even if the Actuary had received a request for a new CETV by 18 December 2017, I consider it is unlikely that the Actuary would have completed the valuation before 30 January 2018. I therefore consider it more likely than not that a second CETV would always have been on the new factors.
28. Mrs A says it would be unfair if she were to be disadvantaged by the fact that she cannot carry out a calculation to prove she has suffered a financial loss, whereas the Administrator and the Trustees can. I accept that a complainant cannot produce a calculation. If I were satisfied that there had been a delay that caused her to miss out on the application of factors which applied prior to 30 January 2018, I would direct that a calculation be carried out. However, in this case, for the reasons outlined at paragraphs 26 and 27, I do not think a revised CETV quotation could have been produced before the blackout which commenced on 1 January 2018.
29. Mrs A also says that if it can be proved with certainty, rather than on the balance of probabilities, that a transfer quotation could not have been produced before start of the blackout, she should not be disadvantaged. However, the standard of proof which I am bound to apply is that which a civil court would apply, that is the balance of probabilities.
30. Further, Mrs S says if her complaint cannot be upheld, she should be awarded a higher level of compensation to recognise the time the complaint process has taken. We publish guidance on “redress for non-financial injustice”. This provides that an award of £500 is justified where: some significant distress and/or inconvenience has been caused to the Applicant; this occurred on one or more occasions; the effect was short-term; and, the respondent took reasonable steps to put things right. I consider that these factors correspond to Mrs S’ circumstances and the overall delay in responding to her requests caused her significant distress and inconvenience. Therefore, an award of £500 is justified in the circumstances.
31. Finally, Mrs A says she should be awarded a refund of the fee that she had to pay the Administrator for a revised quotation. However, I do not agree that this is justified. As outlined at paragraph 13, the Trustees waived the fee for the Third CETV. Having missed the guarantee deadline for the First CETV, Mrs A would always have incurred another fee if she proceeded with her plan to transfer-out her benefits in the Scheme. Therefore, I consider that she is in the correct position with regards quotation fees

PO-26402

32. Therefore, I uphold this complaint against the Administrator.

Directions

33. Within 21 days of the date of this Determination, the Administrator shall pay Mrs A £500 to recognise the significant distress and inconvenience this matter has caused.

Karen Johnston

Deputy Pensions Ombudsman
19 March 2020

Appendix 1: The Occupational Pension Schemes (Transfer Values) Regulations 1996 (as amended)

“...the guarantee date in relation to a statement of entitlement must be—(a) within the period of three months beginning with the date of the member’s application... for a statement of entitlement; or (b) where the trustees are unable to provide a statement of entitlement for reasons beyond their control within the period specified in sub-paragraph (a), within such longer period not exceeding six months beginning with the date of the member’s application as they may reasonably require...” [Section 48]

“(3) A member who has made an application... for a statement of entitlement may not within a period of twelve months beginning on the date of that application make any further such application unless the rules of the scheme provide otherwise or the trustees allow the member to do so...” [Section 53]