

Ombudsman's Determination

Applicant	Mr R
Scheme	The Thomson Corporation PLC Pension Scheme (the Scheme)
Respondent	The Thomson Corporation Pension Trust Limited (the Trustee)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr R says that:
 - he had only two months, instead of the three months he was entitled to, to accept his cash equivalent transfer value (the **CETV**). This is because his CETV was sent out late.
 - the CETV was issued over the Christmas period, which is the busiest time of the year.
 - the transfer factors were changed to benefit members who remain in the Scheme, at the expense of those who transfer out.

Background information, including submissions from the parties

3. Mr R was an active defined benefit (**DB**) member of the Scheme. His benefits were deferred following the sale of the "IP&S" division of Thomson Reuters (**Thomson Reuters**) in October 2016.
4. Under the Pension Schemes Act 1993 (the **1993 Act**), a deferred DB member who is at least one year from normal pension age has a statutory right to take a CETV. This does not apply if the member's pensionable service ended before 1 January 1986.
5. In late 2016 Mr R attended presentations (the **Member Presentations**), during which he was notified that the Trustee had agreed changes to the Scheme's actuarial factors with effect from 1 January 2017.

6. On 8 November 2016, Mr R notified the administrators of the Scheme (the **Administrators**), of his change of address. The following day, the Administrators confirmed that they had amended his details accordingly.
7. On 10 November 2016, the Administrators inadvertently posted Mr R's CETV illustration, (the **November CETV**), to his previous address. A copy was subsequently emailed to Mr R on 24 November 2016, (the **Email**), after Mr R chased the Administrators.
8. The November CETV amounted to £722,077, calculated as at 31 October 2016. It was guaranteed for three months until 31 January 2017 (the **Guarantee Period**).
9. On 11 April 2017, Mr R contacted Thomson Reuters' UK Pensions Manager (the **Pensions Manager**) to request an extension to the deadline. The next day, the Pensions Manager informed Mr R that it was not possible to extend the Guarantee Period as CETVs are only guaranteed for three months.
10. On 21 August 2017, Mr R complained under the Scheme's internal dispute resolution procedures (the **IDRP**). He argued that he had not been given enough time to decide whether to transfer out and to complete a transfer.
11. Mr R's complaint was acknowledged by the Scheme Secretary on 26 September 2017. She attached a copy of the Scheme's IDRP.
12. When Mr R did not receive a decision within the three months that had been indicated to him, he chased for a response. The Scheme Secretary replied the same day and apologised for the delay and for failing to update him.
13. On 11 January 2018, the Scheme Secretary informed Mr R that his case was currently being reviewed. She advised that they were awaiting information from the Administrators and Thomson Reuters. She said that she would continue to chase the parties and would keep him updated.
14. On 17 January 2018, the Scheme Secretary issued a response to Mr R's complaint under stage 1 of the IDRP. She apologised for the time taken to issue the decision.
15. The Scheme Secretary explained that the 1993 Act specifies that Mr R had three months from the "guarantee date" in which to transfer his benefits at the "guaranteed level". She stated that had he attempted to transfer in the days immediately after 31 January 2017, the Trustee may have considered the delay in providing him with the November CETV.
16. The Scheme Secretary pointed out that Mr R had attended the Member Presentations. Consequently, he had been made aware of the importance of taking prompt action to secure the November CETV. The Scheme Secretary said that there was no basis for the Trustee to extend the Guarantee Period, particularly as it was not until two and a half months after the Guarantee Period had ended that Mr R had asked for an extension.

17. In an email he sent on 18 April 2018, Mr R states that he did not look at the Email until a few days after it had been sent. He explains that the Pensions Manager had made the following comment in respect of the changes to the Scheme's factors:

"The calculations from 2017 onwards would be based on FAVOURING those who take out the TAX free lump sum at the point of retiring thus all new calculations for [members] transferring out [of] the pension scheme will be less!

The Government has said [that] individuals are entitled to transfer their pension in its entirety, but the [Scheme has] gone against this and basically said if you transfer out you will lose approx. a third of your entitlement, (this is based on the new valuations people are getting)."

18. Mr R said that he wanted to "challenge" the "legality" [of the Trustee's favouring members who remain in the Scheme]. The Scheme Secretary acknowledged his email the same day. On 21 May 2018, the Scheme Secretary advised that his complaint was currently with the Trustee after Mr R requested an update on 20 May 2018. She indicated that she would chase the Trustee to establish when the Trustee expected to be able to issue its response.
19. On 3 August 2018, the Scheme Secretary advised Mr R that the Trustee had considered his complaint under stage 2 of the IDRP. She attached the response, offering him a distress and inconvenience award of £500 in respect of the delay in issuing the November CETV. The Scheme Secretary apologised for the delay in providing the decision.
20. On 9 August 2018, Mr R asked the Trustee to reconsider his case. He stated that there were "a few issues" with the decision. He advised that he had new evidence that refuted some of the statements in the Trustee's response.
21. Mr R advised that he had also updated the Administrators of his [address] in August 2016, via the "Workflow System", in line with Thomson Reuter's "procedure". He acknowledged that he had received the November CETV on 24 November [2016]. However, he pointed out that this was an electronic copy. He does not check his emails daily.
22. Mr R emphasised that he had gone from being a contributing member to a deferred member. He then only had a three month window in which to transfer out. In his case, he had been given less than three months. He argued that [the Trustee] placed "a lot of pressure" on individuals to make a decision to transfer out in such a short timeframe. This was during the Christmas period, the busiest time of the year. He was not an expert in pensions, "where a wrong decision can lead to life changing results."
23. Mr R said that he had been trying to find a financial adviser and had been making enquiries into the charges and whether the adviser was genuine, which takes time. He had been reminded by a colleague, who had also received his [CETV] late, that

the colleague was told that he would have to obtain a new CETV. Mr R explained that when he heard this, he “and a couple of others” also gave up. After further consideration, he decided to contact the Pensions Manager.

24. Regarding the second part of his complaint, Mr R stated:

“You haven’t addressed whether your initial decision to benefit those who stay above those who leave by rewarding them [a] large lump sum payout is fair and indeed legal!”

25. Mr R included a link to guidance (the **Guidance**) on “The alternative method for calculating CETV’s” published on the Pensions Regulator’s website. The Guidance states:

“The alternative method for calculating CETVs

30. Although the legislation sets a floor on transfer values, it also provides a basis for paying higher amounts. Trustees might set CETVs at a higher level than under the 'best estimate' basis where, for example:

- the scheme's rules require it;
- a **shared cost scheme** is in surplus on its funding basis;
- the employer asks the trustees to do so; or
- the trustees and the employer agree that it would be cost effective to adopt assumptions which are overall likely to produce higher CETVs than under best estimate, rather than to go into the level of detail necessary to ensure best estimate; or
- the trustees consider it is reasonable to do so after consulting with the employer.”

26. On 10 August 2018, the Scheme Secretary informed Mr R that his email would be forwarded to the Trustee.

27. On 28 August 2018, the Trustee wrote to Mr R. The Chairman stated that the offer of an ex-gratia payment of £500 remained open to him to accept. Regarding the change to the Scheme’s factors, the Chairman stated:

“the [Administration Sub-Committee] notes that you were advised by [the Pensions Manager] in the member presentations in late 2016 that the Trustee had agreed to make changes to the Scheme’s factors, which would come into effect from 1 January 2017.

In particular, you were informed that the transfer value factors and commutation factors would be brought closer into line. This was drawn to the attention of members to ensure they were aware that: (i) anyone wanting to put their pension into payment would get more favourable commutation rates

by waiting a short period until January 2017; but (ii) equally, any member considering transferring out of the Scheme would be likely to receive a higher transfer value if the transfer was requested before January 2017 and completed within the statutory three month window.

...

The Committee would like to emphasise that the improvement in the Scheme's commutation factors does not mean that members choosing to remain in the Scheme are being treated more favourably than members wanting to transfer out of the Scheme. The two changes are not actively linked in this way and I can confirm that the concept of rewarding members who stay in the Scheme was [not] part of the Trustee's decision-making. The Trustee reviews the Scheme's transfer value factors at regular intervals as required by the Scheme rules and legislation.

... We do not think that the alternative method set out in [the Guidance] is appropriate for the Scheme at this time and believe that the factors review that the Trustee undertook was in line with good trustee practice and was a reasonable decision."

28. Mr R's position is summarised below.

- He did not receive the November CETV until 28 November 2016, when he accessed his email. It was issued after several exchanges with the Administrators.
- Such an important document should have been sent by post. A paper copy of the November CETV arrived a few days later.
- He needed more time to complete the transfer out process. He has been registered disabled for the last 40 years. He walks with a crutch and has good days and bad days; he takes lots of pain killers.
- There was talk around the office that individuals who had requested an extension to the guarantee period of their CETV, were being told that they would need to apply for a new CETV. Whether this was true or not, he gave up at that point and did not ask for an extension at the time.
- It was not until he received a new CETV in April 2017, which was a third lower than the November CETV, that he realised the extent to which the figures would differ. He then considered that he must contact the Scheme, since he had been deprived of the higher CETV.
- The Scheme "is not in trouble and has a rich Guarantor."

- The change to the transfer factors rewards Scheme members at the expense of those who transfer out their benefits. The Trustee has explicitly and openly stated this.
- In his view, it is like a bank saying that it will withhold a third of the money you are entitled to so that it can pay existing customers a higher rate of interest.
- He is not a pension expert. Pensions is a complicated subject matter, “full of pitfalls and dangers”. In a time where pension fraud is rife, it is important that members do lots of research to be safe.

29. The Trustee’s position is summarised below.

- The Trustee acknowledges that Mr R had a short period of time to make a decision on whether to transfer his benefits. This was mainly down to the statutory guarantee period.
- While the Trustee appreciates that the November CETV was issued over the Christmas period, there is no obligation on the Trustee to extend the guarantee period in these circumstances.
- The Trustee accepts that making a decision to transfer is an important decision. The Trustee also recognises that it takes time to arrange financial advice. However, the Trustee does not consider these to be sufficient reasons to extend the guarantee period.
- All members considering a transfer will have to deal with the same issues and the statutory guarantee period is set at three months.
- Given the delay in Mr R receiving the November CETV, the Trustee would have considered extending the Guarantee Period by an appropriate period. However, the Trustee does not consider it reasonable to keep this open for several months after it has expired.
- The Trustee accepts that the delay in sending Mr R the November CETV amounts to maladministration. However, it remains the Trustee’s view that an ex gratia award of £500 is appropriate in the circumstances.
- Having taken the decision to change the Scheme factors following actuarial advice, the Trustee considers that it acted reasonably in wanting to implement this reasonably promptly. The notice that was given to members was a reasonable compromise in the circumstances.
- If Mr R was considering transferring out, he would have been aware of the importance of acting on the November CETV.

- Transfer values fluctuate according to market conditions and actuarial assumptions and are not guaranteed outside the statutory three month period. The 1993 Act, states that Mr R had three months from the “guarantee date” to accept the CETV.
30. Mr R has calculated his alleged financial loss to be approximately £170,000. He considers that a CETV equal to the amount of the November CETV, or an updated CETV based on the factors prevailing at that time if higher, would resolve his complaint.

Adjudicator’s Opinion

31. Mr R’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 R waited until 11 April 2017 before contacting the Scheme to request an extension to the Guarantee Period. The Adjudicator did not consider that the Ombudsman would direct that the Trustee extend the guarantee period in these circumstances.
 - The Ombudsman would likely take the view that Mr R would have contacted the Scheme before 31 January 2017, if he had intended to take the November CETV.
 - Had Mr R contacted the Trustee shortly before or immediately after 31 January 2017, to request an extension to the deadline, the Adjudicator considered that the right outcome would have been for the Trustee to extend the deadline by the same amount of time by which the Administrators had delayed sending out the quotation to his correct address.
 - It is for trustees of pension schemes to monitor and review the appropriateness of the assumptions underlying the calculation of transfer values acting on actuarial advice. The Ombudsman would not look to take on the role of a pension scheme actuary.
 - Trustees can adopt a voluntary assumption of duty to inform members about an upcoming change in factors to be used to calculate transfer values. However, there is no statutory obligation on trustees to do so.
 - The Adjudicator considered that a determination made by the Pensions Ombudsman in the case of Professor M [PO-13938], raised similar issues to Mr R’s complaint.
 - Professor M complained about changes to the assumptions and factors used in the calculation of a 1% pension share in respect of his ex-wife’s pension credit. The Ombudsman concluded that:

“[it] is a matter for the Trustee to decide, based on the scheme actuary’s advice and recommendations, how the transfer values should be calculated. It is not within my statutory jurisdiction to direct the Trustee on the appropriateness of actuarial factors and assumptions that should be used to calculate transfer values.”

- The Adjudicator did not consider that the Ombudsman would likely depart from this view and uphold Mr R’s complaint.
- The Trustee’s offer of £500 was reasonable in the circumstances and in line with what the Ombudsman would direct in similar cases.

32. Mr R did not accept the Adjudicator’s opinion and the complaint was passed to me to consider. Mr R has provided his further comments, but these do not change the outcome. I agree with the Adjudicator’s opinion. I will therefore only respond to the key points made by Mr R for completeness.

Ombudsman’s decision

33. Mr R says that he still does not comprehend that he can be sent a valuation nearly a month late over the busiest time of the year. It seems to him that pension experts can delay matters but the lay person, who finds the whole process “baffling and dangerous even”, must act promptly.
34. Mr R has repeated that, unlike the Trustee, he is not conversant with pensions. He has issues with his health. Consequently, he had a lot to contend with.
35. I note that Thomson Reuters is not a party to Mr R’s complaint. Any alleged issues relating to the role of the Pensions Manager in this matter falls outside the scope of this complaint and I do not comment on those issues or make any findings in relation to Thomson Reuters.
36. I empathise with Mr R’s position. However, I am not persuaded that he has suffered financial loss given the sequence of events.
37. I find that Mr R was suitably warned about the impending changes to the transfer factors and the implications this would have on CETVs calculated after January 2017.
38. Under the 1993 Act, a member of a pension scheme who has received a statement of entitlement, acquires a right to take the cash equivalent shown in that statement. If the member wishes to accept the CETV, the member must make an application in writing within three months of the guarantee date shown in the relevant statement of entitlement.
39. Mr R’s missed opportunity to transfer the CETV that was quoted to him in November 2016, therefore does not equate to actual financial loss because he did not apply to

take the CETV within three months of its guarantee date. I note that Mr R has not disputed this.

40. Once the Guarantee Period had expired on 31 January 2017, Mr R was no longer entitled to take the November CETV. Similarly, there was no legal obligation on the Trustee to honour it.
41. I am not aware of any provisions in pension legislation that requires trustees to extend the guarantee period in any circumstances. In the absence of any legal obligations on the Trustee to continue to honour the November CETV, I cannot reasonably require that the Trustee reconsider its decision in this case, particularly since the request for extension came many months after the expiry of the deadline.
42. Regarding the issues Mr R has raised concerning the Scheme's factors, trustees have a duty to act impartially between different classes of beneficiaries and between an individual and other beneficiaries. This does not mean that trustees should treat all classes of beneficiaries in the same way.
43. Notwithstanding this, Mr R has not provided any evidence to corroborate his assertion that Scheme members will be rewarded with a higher retirement lump sum to the financial detriment of members who choose to transfer out.
44. It is for trustees of pension schemes to take actuarial advice on the calculation of CETVs. Having taken that advice, it is for trustees to determine the economic, financial and demographic assumptions that will be used in the calculation.
45. There is nothing in the evidence to substantiate that the Trustee acted outside the law in this case. The fact that Mr R considers that the Trustee should adopt the "alternative method for calculating CETVs," is not evidence of maladministration on the part of the Trustee.
46. Mr R is entitled to an award to the extent that the delay in him receiving the November CETV likely caused him significant distress and inconvenience. I find that the award of £500, that had already been offered by the Trustee, was sufficient to remedy that injustice.
47. Mr R should now contact the Trustee if he wishes to accept that offer.
48. I do not uphold Mr R's complaint.

Karen Johnston

Deputy Pensions Ombudsman
3 December 2019