

Ombudsman's Determination

Applicant	Mr L
Scheme	EVC UK Plan (the Plan)
Respondent	EVC Pension Trustees Ltd (the Trustee)

Outcome

1. I do not uphold Mr L'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 L's complaint against the Trustee is that it mishandled his application to transfer out of the Plan. He says that this caused him to suffer a financial loss of £121,768.

Background information, including submissions from the parties

4. On 16 February 2017, Mr L requested a cash equivalent transfer value (**CETV**).
5. The Trustee sent a CETV dated 8 March 2017 to Mr L. It showed a transfer value of £448,066.28, a reduction of about 20% had been applied due to the Plan being underfunded. The CETV gave a guarantee expiry date of 7 June 2017. It also said, "No guarantee can be offered whilst you are in Pensionable Service".

6. The CETV further noted:

"The [CETV] has been reduced to reflect the fact that the [Plan] is underfunded, ie the value of the Plan's assets are insufficient to meet the liabilities in full at present (as identified by the latest actuarial valuation). The decision to reduce [CETVs] has been made by the Trustees of the Plan, having taken actuarial advice...The Trustees and Company have designed a recovery plan that is expected to bring the Plan to a fully funded position by April 2025. At that time the Plan will be expected to be fully funded and transfer values will no longer be reduced. This is based on a number of assumptions and if these assumptions do not all turn out to be correct, the recovery plan period may need to be extended. The Trustees regularly review

the reduction applied to [CETVs] as market conditions change. The full transfer value before reduction would have been £566,983.00.

...

This statement is based on information currently held by the administrator of the scheme and is produced for information only. It is not proof of entitlement and confers no right to benefits. All benefits must be calculated and paid only in accordance with the trust deed and rules of the scheme and UK and European law, and are therefore subject to review before payment”.

7. Mr L was still an active member of the Plan when he requested the CETV. Nevertheless, the Trustee says that it exercised its discretion and provided a guarantee in the CETV.
8. In March 2017, Inovyn Limited, the employer, provided a capped parent company guarantee to the Plan (the **Company Guarantee**).
9. Mr L subsequently left active service on 7 April 2017. On 26 April 2017, he returned the completed transfer documents to accept the CETV of £448,066.28 and confirm his transfer request.
10. On 27 April 2017, during a trustee meeting, the Trustee decided to revisit transfer values on the completion of the Plan's 2016 valuation.
11. On 5 July 2017, Mercer confirmed a transfer amount of £458,038.86. This was a slight increase on the previous CETV due to a higher value in respect of Mr L's additional voluntary contributions (**AVCs**). The same day, the Plan's 2016 valuation was completed.
12. Mr L's transfer amount was paid out on 14 July 2017.
13. On 10 August 2017, there was a trustee meeting at which the 2016 valuation was considered. It decided, in principle, to reduce transfer values by 10% instead of 20%, subject to further financial advice. On 19 September 2017, it confirmed the reduction of 10%, subject to further review in April 2018.
14. Mr L found out about the adjusted reduction to transfer values in September 2017, via the Plan newsletter.
15. In April 2018, the Trustee stopped applying a reduction to transfer values.
16. Mr L complained to the Trustee in June 2018. He questioned the decision to apply a reduction to his CETV.
17. On 31 July 2018, the Trustee responded to Mr L's complaint. It explained that the decision to reduce transfer values by 20% was taken in December 2016. This followed an insufficiency report from the Plan Actuary as the Plan was in deficit. The October 2016 member newsletter also explained that the average reduction to transfer values at the time was 26%. The Trustee noted that the Plan's 2016

valuation was completed on 5 July 2017, after Mr L had accepted the CETV. Mr L's transfer was finalised before the Trustee decided to adjust the reduction to 10%. The Trustee said it had been awaiting investment advice and completion of the Plan valuation. So, it could not have made the decision to adjust CETVs sooner. The Trustee said Mr L had taken independent financial advice and was aware of the reduction prior to accepting the CETV.

18. Mr L remained dissatisfied and appealed against the Trustee's decision. He questioned the CETV process and stated that his CETV should have been recalculated.
19. The Trustee responded on 11 September 2018. It said that the insufficiency report and annual valuations complied with legislation. The Trustee confirmed that the strength of the employer covenant and the Company Guarantee formed part of its overall considerations. However, the Company Guarantee was entered into after Mr L's CETV was issued. So, it could not have been taken into account when the quotation was provided to Mr L. The Trustee highlighted that the notes saying that the CETV was subject to review formed part of a larger statement subjecting it to the Plan's rules and legislation. The Trustee upheld its previous decision.
20. Mr L disagreed with the outcome and brought his complaint to us. He insisted the Trustee should have reviewed his CETV and removed the reduction before his transfer. He quoted a previous Pensions Ombudsman case which mentioned that an active member is not entitled to a three-month guarantee period. He did not agree that the CETV provided to him included a three-month guarantee. He considered that the Trustee should have immediately actioned the Company Guarantee and/or informed him of it.
21. The Trustee explained that it exercised discretion and gave Mr L a guaranteed CETV. While he was not entitled to a guarantee period, the Trustee provided one to assist him with his retirement planning. Any CETV provided to him after he retired on 7 April 2017, would have been on the same basis as the previous CETV. Mr L was a former Trustee Director of the Plan, so he would have been aware that transfer values can change depending on various factors.
22. The Trustee confirmed it carried out transfer value reviews in December 2016, April 2017 and August 2017. It only decided to adjust the reduction in August 2017 due to:
 - the final results of the 2016 valuation;
 - the employer covenant, including the Company Guarantee;
 - the improvement in the Plan's funding levels since the valuation date, including changes in market conditions and recent investment performance;
 - the latest data on UK life expectancy;
 - regulations and guidance on CETVs;

- reviewing professional advice.

Adjudicator's Opinion

23. Mr L'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 briefly below: -

- The CETV clearly stated that there was a guarantee period of three months, which would expire on 7 June 2017. The Trustee did not have to review Mr L's CETV or revisit its calculation before the transfer.
- Although the CETV mentioned that a guarantee cannot be offered while the member is in active service, the Trustee exercised its discretion to offer a guarantee.
- A footnote in the CETV mentioned it was subject to review, but this was in the wider context of it complying with the applicable rules and legislation.
- The notes accompanying the CETV made Mr L aware of the reason for the transfer value reduction, that this could change and that it was subject to regular review.
- Presumably, Mr L relied on the guaranteed amount in the CETV when he applied to transfer his benefits and expected the Trustee to honour the transfer value quoted to him.
- Mr L's complaint differs from the previous Pensions Ombudsman's decision he has mentioned. The CETV in that case was not guaranteed.
- Mr L asked for the transfer before the Trustee had an opportunity to properly review the Company Guarantee in the light of other relevant factors. In any event, the Trustee was not obliged to inform Mr L of the Company Guarantee before finalising his transfer.
- The actions of the Trustee did not amount to maladministration.

24. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L and the Trustee provided their further comments but these do not change the outcome. Mr L said that the CETV clearly stated it was not guaranteed, was for information only and subject to review before payment. As he was still a member of the Plan when the CETV was issued, as in the previous Pensions Ombudsman case mentioned above, the transfer value was not guaranteed. In his view, although the funding position of the Fund was improving, the most significant reason for the decision to end the reduction of transfer values was the Company Guarantee. Accordingly, the Trustee should have adjusted the reduction in transfer values immediately or informed him of the Company Guarantee.

25. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

26. Mr L considers that the CETV issued to him was not guaranteed. I have noted that the CETV stated that no guarantee can be offered while the member is in pensionable service. However, this was directly below a notice of the guarantee date expiry on 7 June 2017. If Mr L was confused by this, he could have contacted the Trustee for clarification. There is no evidence that he did so. Instead he accepted the transfer value quoted to him. I find that it is reasonable to assume Mr L considered it to be guaranteed. There is no statutory requirement for trustees to offer a three-month guarantee to an active member of the scheme, but this does not prevent them from doing so in exceptional circumstances.
27. Mr L requested the CETV while he was in active service, but he had informed the Trustee of his leaving date of 7 April 2017. We know this because the CETV states the end of his pensionable service as 7 April 2017. This confirms the view that the Trustee was aware of his imminent departure and the CETV was exceptionally guaranteed to assist in his retirement planning. Mr L was no longer in pensionable service when he asked for the transfer to proceed and the Trustee has explained that another CETV provided at that time would have been calculated on the same basis.
28. The CETV contained the caveats which are usually included to help protect pension trustees against any errors or omissions. Moreover, the intentions of both parties were clear – the Trustee had provided a guaranteed CETV and Mr L was relying on the figures provided. In this respect, Mr L's case differs from the previous decision he has cited. In that case, this office concluded that the CETV provided to the Applicant was never guaranteed at any time and there were sufficient warnings provided about that.
29. I acknowledge that the Company Guarantee would likely have been a factor in the Trustee's decision concerning the adjustment to transfer values. The Trustee does not dispute this. However, the Company Guarantee needed to be considered in the light of other prevailing factors, such as the Plan's improved funding level. The Trustee was not under any legal obligation to inform Mr L of the Company Guarantee before considering it.
30. It is not my role to step into the place of the Trustee and decide what the most significant factor in its deliberations should have been. That is a matter for the Trustee, having taken account of all relevant factors. Regardless of whether the Company Guarantee was the most significant factor or not, the Trustee was still required to give it due consideration before making any adjustments to transfer values going forward.
31. Even after the proper consideration of the Company Guarantee and other factors by the Trustee in August 2017, there was still a reduction of 10% to transfer values in

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September 2017. This reduction was only completely removed in April 2018. Therefore, earlier consideration of the Company Guarantee would not necessarily have resulted in an immediate adjustment to transfer values.

32. Furthermore, I am not convinced from the evidence that the Trustee should have immediately adjusted transfer values solely based on the Company Guarantee it received in March 2017. This is not what I would expect of a reasonable body of trustees.

33. I do not uphold Mr L's complaint.

Karen Johnston

Deputy Pensions Ombudsman
24 September 2019