

## Ombudsman's Determination

Applicant	Mr Y
Scheme	House of Fraser Beatties & Jenners Pension Scheme ( <b>the Scheme</b> )
Respondents	House of Fraser Pension Trustees Limited ( <b>the Trustee</b> ) & Equiniti

## Outcome

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

## Complaint summary

2. Mr Y complained that the delay in providing a cash equivalent transfer value (**CETV**) quotation prevented him from transferring his benefits prior to the Scheme entering the Pension Protection Fund (**PPF**) assessment period. Mr Y also argued that the corporate voluntary arrangement (**CVA**), entered into by the Scheme's sponsoring employer (**the Employer**), contained misleading information about the Scheme.
3. Mr Y would like to transfer his pension benefits.

## Background information, including submissions from the parties

4. Mr Y has pension benefits preserved within the Scheme as a result of two separate periods of pensionable service. The Scheme is administered by Equiniti, on behalf of the Trustee.
5. On 22 December 2017, Mr Y called Equiniti. He said he requested a CETV quotation during this call, but the recording of the call does not include such a request.
6. Mr Y said he also requested a CETV quotation from Equiniti in January 2018 and continued to chase that until August 2018.
7. In April 2018, Mr Y called Equiniti requesting a retirement illustration.
8. In June 2018, the Employer issued an explanation of the CVA which described the Scheme as, "well-funded and in surplus on an accounting basis".

9. In July 2018, Equiniti confirmed to Mr Y that it would not provide him with a retirement illustration, as requested, because his intended retirement date was more than six months away.
10. Equiniti received a request from Mr Y for a CETV quotation on 3 August 2018. Equiniti said this was the first time it received a request for a CETV quotation.
11. On 9 August 2018, Equiniti sent a CETV quotation to Mr Y for the first part of his benefits.
12. On 24 August 2018, Mr Y called Equiniti to chase the CETV quotation for the second part of his preserved benefits. Mr Y said he sent the Pension Transfer Request Form, Confirmation of Receipt of Appropriate Financial Advice Form and the Transfer out Authority Form to Equiniti on the same day.
13. On 31 August 2018, following the insolvency of House of Fraser Limited (**HOF**), the Scheme entered an assessment period for the purposes of the PPF. From this date, requests for transfers out of the Scheme were put on hold. The only exceptions were instances where all transfer documentation had been received by Equiniti prior to the Scheme entering the PPF's assessment period. Transfer documentation included: identification, advice from an independent financial advisor and details of the receiving scheme. This decision was made in accordance with Section 135(4)(a) of the Pensions Act 2004:-

“During the assessment period, except in prescribed circumstances and subject to prescribed conditions – (a) no transfers of, or transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme.”
14. In September 2018, Mr Y complained to Equiniti about the delay in providing him with a CETV quotation. He said the delay meant he was unable to transfer his benefits due to the Scheme entering the PPF assessment period.
15. On 10 October 2018, Equiniti responded to Mr Y's complaint. It admitted that it did not meet its expected level of service and apologised for the administrative delays.

### **The Trustee's position**

- Whilst the Scheme is in the PPF assessment period, legislation requires transfer requests to be put on hold. The PPF told the Trustee that it did not have discretion to override this.
- The 'required documents checklist', included in the documents sent to Equiniti on 24 August 2018, confirms Mr Y did not return all the necessary documentation required to process a transfer before 31 August 2018.
- The administration of HOF was unanticipated. So, the Trustee, Equiniti and Mr Y would not have been aware of the impending PPF assessment period when the CETV quotation was requested on 3 August 2018.

- Even if Mr Y had received both CETV quotations at the same time, it is unlikely he would have been able to obtain the relevant financial advice and complete and return all the required documents before 31 August 2018.
- The Trustee had no reason to think that the CVA was based on incorrect calculations. There are differences in the basis of calculations performed by the Trustee and the Employer when valuing the Scheme's liabilities. But the CVA did not change the Scheme's position at the time. The Scheme entered the PPF assessment period as a result of HOF entering into administration. The CVA was prepared by the insolvency practitioner appointed by the Employer. The Trustee was required to submit proof of debt to the appointed insolvency practitioner. It said it took professional advice and actively engaged with representatives of the Pensions Regulator and the Pension Protection Fund throughout the CVA process.

16. The Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the Regulations**) (see Appendix) requires the Trustee to produce a CETV quotation within three months of a member's request for one.

### **Adjudicator's Opinion**

17. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Equiniti. The Adjudicator's findings are summarised below:-
- Mr Y complained that the Trustee's maladministration meant he was unable to transfer his benefits. The Scheme entered the PPF assessment period on 31 August 2018, so Section 135(4)(a) of the Pensions Act 2004, restricted the circumstances where members would be allowed to transfer out.
  - Mr Y said that he originally requested a CETV quotation during a phone call with Equiniti on 22 December 2017. Equiniti has been able to supply the phone call recording from this date and it does not support Mr Y's claim that he requested a CETV quotation. The earliest evidence of a CETV quotation request is from 3 August 2018.
  - Mr Y complained about Equiniti's failure to provide him with a CETV quotation for the second part of his pensionable service before the PPF assessment period began. This meant he was unable to transfer these benefits. As the evidence clearly shows the first request for a CETV quotation was made on 3 August 2018, Equiniti had until 3 November 2018 to issue this. The three-month period to produce the CETV quotation was cut short due to the Scheme entering the PPF assessment period.
  - Mr Y argued that he supplied the transfer documents to Equiniti on 24 August 2018 for one part of his pensionable service so, despite the Scheme entering the PPF assessment period, the transfer should have completed. The 'Required

Documents' checklist completed by Mr Y, clearly shows that only part of the information was sent to Equiniti. As a result, Mr Y does not qualify to be an exception under Section 135(4)(a) of the Pensions Act 2004.

- Mr Y has also complained that the CVA, published by the employer, contained misleading information. The Scheme's position on transfers only changed when it entered the PPF assessment period, not due to the CVA. The information contained in the CVA was based on calculations performed by the House of Fraser Group companies, not the Trustee. The Trustee did not provide any input into the publication of the CVA.
18. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
19. Mr Y provided his further comments which do not change the outcome. Mr Y has argued that:-
- The letter he received from Equiniti, on 10 October 2018, had not been considered by the adjudicator.
  - His request for retirement illustrations in April 2018, included a request for a CETV.
  - The adjudicator failed to spot that Equiniti did not provide Mr Y with a CETV for his second period of service.
  - The Trustee was aware of the CVA and did not act in the best interests of the Scheme.
  - He sent a letter of authority prior to the PPF assessment period.

### **Ombudsman's decision**

20. I appreciate, given the Scheme's financial position, that Mr Y wants to transfer his benefits out of the Scheme. However, the Scheme is now in the PPF assessment period, so transferring out is not possible.
21. A retirement illustration and CETV quotation are treated as two separate requests. So, when Mr Y requested retirement illustrations in April 2018, he should not have expected CETV quotations to be sent at the same time. The evidence confirms that Mr Y requested a CETV quotation on 3 August 2018, which should have been produced by 3 November 2018. The Trustee and Equiniti cannot be held responsible for Scheme entering the PPF assessment period which had the effect of reducing the three-month period.
22. Mr Y received a CETV quotation for one period of service on 9 August 2018. The PPF assessment period began on 31 August 2018. Mr Y failed to provide Equiniti with all the transfer documents before this deadline, so is not exempt from Section

135(4)(a) of the Pensions Act 2004. By Mr Y sending Equiniti a letter of authority prior to 31 August 2018, is not sufficient to proceed with the transfer.

23. I can appreciate that the publication of the CVA may be misleading to Mr Y. However, the Trustee followed guidance from the PPF and the Pensions Regulator, before providing a proof of debt to the Employer, I am satisfied that it took reasonable measures to be as accurate as possible.
24. Mr Y has argued that the letter he received from Equiniti, on 10 October 2018, had not been considered by the adjudicator. I disagree. Equiniti apologising for the service levels received does not mean it has done anything legally wrong. Service level agreements are usually timeframes agreed with trustees. The Regulations give the Trustee a maximum of three months to provide a CETV quotation.
25. I do not uphold the complaint.

**Anthony Arter**

Pensions Ombudsman  
28 January 2020

## **Appendix**

### **The Occupational Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847) Regulation 11**

#### **Part 3 Statements of Entitlement and Calculations of Transfer Values**

“(1) Subject to paragraph (1A) and (1B), a member to whom paragraph (1C) applies is entitled to receive from the trustees, on request, the information mentioned in Schedule 1 in writing.

(1A) Paragraph (1) does not apply where the request is made within 12 months of the last occasion that such information was provided to the member.

(1B) information provided under paragraph (1) is to be provided by the trustees as soon as reasonably practicable, and in any event within three months after the date that the member makes the request.

(1C) This paragraph applies-

(a) to a member who is currently accruing rights to one of the categories of benefits; and

(b) to a member who is no longer accruing rights to money purchase benefits unless, in respect of those benefits, a crystallisation event under section 93(7) has occurred.”