

## Ombudsman's Determination

<b>Applicant</b>	Mr Stephen Westbury
<b>Scheme</b>	Oracle UK Pension Plan ( <b>the Plan</b> )
<b>Respondent</b>	Towers Watson

### Complaint Summary

Mr Westbury complains that he has suffered a financial loss in the region of £23,000 because of delays on the part of Towers Watson in effecting a transfer of his pension rights from the Plan in order to secure an annuity with Legal and General.

He also says that he has suffered distress and inconvenience dealing with this matter for which he would like to be suitably compensated.

### Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against Towers Watson. Due to the nature of the Plan, the transfer process was time consuming but Towers Watson had not caused any undue delay in the process.

## **DETAILED DETERMINATION**

### **Background of the Plan**

1. The Plan is a money purchase pension scheme. It has a final salary underpin for pensionable service accrued before 31 May 2004.
2. A member's underpin pension is calculated using  $1/80^{\text{th}}$  of his/her pensionable service prior to 31 May 2004 and final pensionable salary. This is converted into an underpin value by the Plan actuary and compared with the value of a member's core money purchase benefits accrued prior to 31 May 2004. The higher of the two values is available to the member.
3. Towers Watson took over the administration of the Plan from AEGON in 2008 and discovered that there were problems with the pensionable salary data for, more or less, the whole membership of the Plan.
4. Originally Towers Watson collaborated with the Plan Trustees and Actuary to resolve the problems on an individual basis.
5. In 2012, the Plan Trustees appointed ITM to undertake a review of this data and also re-calculate the final pensionable salary for each member of the Plan.
6. This project is now near completion but has taken longer than the Plan Trustees expected because of the project nature and complexity of the Plan structure.

### **Material Facts**

7. Mr Westbury asked Towers Watson on 13 January 2012 by e-mail some questions about the retirement options available to him from the Plan. He received an automated response which said that Towers Watson would reply within five to ten days and notify him accordingly if they were unable to do so.
8. Towers Watson responded on 24 January as follows:
  - it would not be possible to retire early before age 65 in the Plan; and
  - if he was considering this, he would have to transfer his pension rights in the Plan to another pension arrangement.

9. On the same day, Mr Westbury asked Towers Watson to promptly provide details of the transfer out process because he did not want a “10-day delay” between each correspondence.
10. Towers Watson sent Mr Westbury a transfer out request form by e-mail on 1 February. They informed him that their transfer documents would be sent to the administrators of his receiving scheme when he completed and returned this form.
11. Mr Westbury received an annuity quotation dated 13 February 2012 from Legal & General showing that a fund value of £240,785 would purchase a non-increasing annuity of £12,627 payable annually in arrears. The annuity rate of 5.2442% (that is  $12,627/240,785 \times 100$ ) was guaranteed only until 2 March 2012.
12. Towers Watson received the completed transfer request form from Mr Westbury on 15 February and Legal & General’s requirements for the transfer on 22 February.
13. On 1 March, Towers Watson asked the Human Resources (**HR**) department at Oracle for details of Mr Westbury’s part-time service and temporary absence. They also requested details of his salary history and service dates and received this information on 12 March. They had to send a reminder on 13 March for Mr Westbury’s part-time and temporary service though and were told on 21 March that he had none.
14. On 29 March 2012, Towers Watson sent their transfer pack to Legal & General which included the following:
  - a current transfer value statement\*;
  - a transfer agreement form (to be signed by Mr Westbury and Legal & General);
  - a transfer out authority form to be completed by Legal & General; and
  - a key facts document.

\*this statement included details of the value of the final salary underpin calculated by the Plan Actuary of £48,330.

The covering letter sent with the pack said that Mr Westbury's current transfer value of £188,027 was not guaranteed and the amount payable would be the value of the funds at the date "the fund manager sold his personal account".

15. Towers Watson received the completed transfer agreement, transfer out authority form and confirmation that the receiving scheme was approval by HM Revenue & Customs (**HMRC**) on 11 April.
16. Towers Watson started selling Mr Westbury's Plan assets on 17 April and completed the sale on 27 April. A fund value of £175,418 was paid into the Plan Trustees' Bank Account. The value of his pre 31 May 2004 core contributions included in this figure was £37,674.
17. Towers Watson performed a further underpin calculation and arranged for the sale of the additional Plan assets required to cover the difference between the value of the final salary underpin, £48,330, and the value of Mr Westbury's pre 31 May 2004 core money purchase benefits, £37,654 on 3 May. This sale of assets totalling £10,656 was completed on 15 May. Towers Watson paid a transfer value of £186,075 (that is, £1,952 lower than the amount originally quoted) to Legal & General on 18 May. A breakdown of the transfer values available as at 29 March and 18 May can be found in Appendix One below.
18. Legal & General received the payment on 22 May 2012 and purchased an annuity for Mr Westbury using a lower annuity rate of 5.1894% applicable at that time.
19. Mr Westbury was unhappy with the time taken by Towers Watson to complete the transfer. His complaint to the Plan Trustees under the Internal Dispute Resolution Procedure (**IDRP**) of the Plan was unsuccessful at both stages.

### **Summary of Mr Westbury's position**

20. He wanted to purchase an annuity with Legal & General using the funds available from three of his previous pension schemes including the Plan. The pension providers of his other two schemes (which were personal pensions), Friends Life and Standard Life, completed the transfers by 22 February 2012.

21. Towers Watson took three months to carry out a transfer that, in his view, ought to have been completed within two weeks. Standard Life and Friends Life were able to comfortably meet this target completing similar transfers.
22. As a consequence of the delays incurred by Towers Watson finalising the transfer, both the fund value and the annuity rate available to him fell. He has estimated that he has suffered a financial loss in the region of £23,000 because of this.
23. In his opinion, Towers Watson should be held responsible to him for this financial loss and should seek appropriate redress from Oracle and the investment managers who contributed to the delay in the transfer process.
24. He says that:

“In the 21<sup>st</sup> century, when most transactions in the Financial Services actually happen within milliseconds, this behaviour is disgraceful. They are dealing with people’s life savings, yet show no sign of recognising the importance of this to their customers...

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So whilst they may claim that they acted within “statutory deadlines”, how can such deadlines of three to six months be defended? These organisations are supposed to be acting to protect their customer’s interests – yet this is clearly not the case, or the timescales would be set perhaps 7-14 days as was easily achieved by the other two organisations with whom I dealt in this matter.”
25. All the transfer forms (and not just the transfer out request form) should have been sent to him on 1 February.
26. Towers Watson only sent the transfer pack (including the other transfer forms) to Legal & General on 29 March despite having verbally informed him on 7 March that it had been sent out on 6 March.
27. Towers Watson’s goodwill compensation offer of £500 in recognition of their failure to communicate with him adequately during the transfer process is derisory.

### **Summary of Towers Watson’s position**

28. If a member requesting a transfer quotation has pensionable service before 31 May 2004, his/her salary history records are checked with Oracle to ensure that an

accurate final salary underpin figure is calculated. The transfer quotation can only be produced after this figure is known.

29. Settlement periods vary depending on the Plan assets selected for disinvestment. Each sale can take up to 10 working days to complete.
30. The transfer process involves many steps. They do not consider that the time which they spent on each step to be unreasonable. They made every effort to ensure that each stage in the process was completed in a timely manner.
31. They have acted within the timescales set out in their Service Level Agreement with the Plan Trustees. (Mr Westbury says that he was not made aware of the existence of such an agreement).
32. They provided Mr Westbury with a transfer value quotation within two months of request and payment was made just over six weeks after receiving all their requirements in order for the transfer to go ahead. Both stages were therefore completed comfortably within statutory timescales as specified in the Occupational Pension Schemes (Transfer Value) Regulations 1996. The relevant provisions from these regulations have been reproduced in Appendix Two below.
33. They have not been able to find a record of the telephone call which Mr Westbury says occurred on 7 March and have already apologised to him if they had wrongly led him to believe that a transfer pack was sent on 6 March to Legal & General.
34. They accept that they had failed to keep Mr Westbury adequately informed of what was happening during the transfer process. They also concede that they had not clearly explained to him the potential timescales involved at the beginning of the transfer. They have apologised to Mr Westbury and offered him a compensation payment of £500 in full and final settlement of his complaint which he has declined.
35. In future they will be sending out a note to members requesting a transfer quotation explaining the transfer process so that they are fully aware of the likely timescales.

## **Conclusions**

36. Mr Westbury considers that Towers Watson ought to have completed the transfer of his pension rights in the Plan to Legal & General within two weeks of receiving his instructions. To justify his opinion, he has compared the level of service which

Standard Life and Friends Life provided him dealing with transfers from his personal pensions to Legal & General at around the same time. In his view, as both of these companies finalised their transfer processes by 22 February 2012, Towers Watson ought to have completed theirs in a similar time frame.

37. I do not however consider this is a fair comparison to make because the nature of a personal pension plan is very different to that a money purchase pension plan, in particular one which has a final salary underpin such as the Plan.
38. The defined benefit aspects of the Plan added a significant level of complexity to the calculation of the cash equivalent transfer value (**CETV**) available to Mr Westbury. For his personal pension plans, the funds available for transfer were simply the realisable values of the assets into which his contributions had been invested. This is not the case for the Plan which required involvement of the Plan Actuary to determine the value of Mr Westbury's final salary underpin before the CETV could be calculated.
39. In order to calculate a correct figure for Mr Westbury's underpin pension, the Plan Actuary required a precise figure for his final pensionable salary. The quality of the membership data for the Plan which Towers Watsons inherited was poor however and it was necessary for them to check with Oracle that their record for Mr Westbury's salary history was reliable before the Plan Actuary could calculate the value of this underpin pension. In my view, this was a reasonable step for Towers Watson to take and they clearly cannot be held responsible for the time taken by Oracle to provide a full response to their enquiries about the data.
40. Similarly, I do not consider it to be fair for Towers Watson to be held accountable for the time spent by the relevant investment manager(s) selling the Plan assets selected for disinvestment because again they had no control over this.
41. The annuity rate quoted by Legal & General of 5.2442% was guaranteed until 2 March 2012 which was approximately two weeks from the date of quotation.
42. In my view, it is unrealistic for Mr Westbury to have expected that the transfer would have been completed before the expiry date of this annuity rate. The perceived delays in the transfer process were a reflection of the process which Towers Watson had to follow to ensure that the correct transfer value was calculated and

paid to Legal & General. This process was necessarily time consuming because there were stages where Towers Watson had to involve third parties before they could move onto the stage. I do not therefore consider that Towers Watson has caused any unreasonable delay during the transfer process.

43. In any case, Towers Watson had provided Mr Westbury with a transfer value quotation within two months of request and made payment just over six weeks from receipt of his instruction to proceed with the transfer. Both steps of the transfer process had therefore been completed well within the statutory requirements.
44. I can entirely see why Mr Westbury thinks that, by comparison to other transactions, the transfer took a long time. But in deciding whether there was maladministration I cannot impose a timescale of my own. I can only look to see whether the time that was taken at each step was justified by the tasks that had to be carried out and the standard that could reasonably be expected of a scheme administrator in similar circumstances.
45. I note however that Towers Watson accept that they should have been more proactive in terms of communicating the transfer process and expected timescales to Mr Westbury. In my view, their failure to do so was maladministration on their part and in recognition of this, Towers Watson offered him £500 compensation and I consider that to be in line with what I would likely have awarded given the circumstances.
46. The offer was on the table before Mr Westbury complained to the Pensions Ombudsman Service. I have power to deal with a complaint that Mr Westbury had suffered injustice. Since, by the time he complained any injustice had been put right by the offer, I do not uphold Mr Westbury's complaint.

**Tony King**

Pensions Ombudsman

27 February 2015





**APPENDIX ONE**

	<b>Element of benefits</b>	<b>Transfer Value quotation on 29 March 2012 (£)</b>	<b>Transfer Value paid on 18 May 2012 (£)</b>
<b>1(A)</b>	<b>Final Salary Underpin</b>	48,330	48,330
<b>1(B)</b>	<b>Value of core contributions paid prior to 31 May 2004</b>	38,202	37,674
<b>2</b>	<b>Value of additional (non-core) contributions paid prior to 31 May 2004</b>	48,500	47,822
<b>3</b>	<b>Value of contributions paid after 31 May 2004</b>	91,198	89,923
	<b>Total Transfer Value (being the sum of the higher of 1(A) and 1(B), plus 2 plus 3</b>	188,028	186,075

## **APPENDIX TWO**

### **Relevant Paragraphs Taken From the Occupational Pension Schemes (Transfer Values) Regulations 1996**

#### **1A Salary related schemes**

For the purposes of Chapter IV of Part IV of the 1993 Act and these regulations an occupational pension scheme is salary related if it is not a money purchase scheme and it is not a scheme –

- (a) the only benefits provided by which (other than money purchase benefits) are death benefits; and
- (b) under the provisions of which no member has accrued rights other than rights to money purchase benefits).

#### **11 Disclosure**

- (1) Subject to paragraphs (1A) and (1B), an active member of any scheme, and a deferred member of a money purchase scheme, 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.

- (4) The trustees must ensure that a statement of entitlement to a guaranteed cash equivalent is accompanied by-

- (a) the information mentioned in Schedule 1 in relation to any cash equivalent of or transfer value in relation to the member's money purchase benefits (if any) under the scheme, calculated by reference to the guarantee date;

- (b) a statement in writing –

- (iv) explaining that if the member wishes to exercise his right to take the guaranteed cash equivalent the member must submit a written application to do so within three months beginning on the guarantee date;

- (5) Where a guaranteed cash equivalent is reduced or increased...the trustees must notify the member of the fact in writing within ten days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday) and such notification must-
- (a) state the reasons for and the amount of the reduction or increase;
  - (c) state that the member has a further three months, beginning with the date on which the member is informed of the reduction or increase, to make a written application to take the guaranteed cash equivalent as so reduced or increased.