PO-28605

Ombudsman's Determination

Applicant	Mr Y
Scheme	Honeywell UK Pension Scheme (**the Scheme**)
Respondents	Honeywell UK Pension Scheme Trustee Ltd (**the Trustee**) Willis Towers Watson (**WTW**)

Outcome

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

Complaint summary

2. Mr Y's complaint against the Trustee and WTW is in two parts. Firstly, he was given an incorrect cash equivalent transfer value (**CETV)** quotation in 2016. Mr Y says that in 2017, he moved house in reliance on the 2016 quotation, and incurred significant costs. Secondly, he experienced delays and poor customer service, and received incorrect and contradictory information, about his Scheme benefit options, and transfer value in particular, in 2016 and 2018.

Background information, including submissions from the parties

3. Initially, Mr Y started working for Honeywell Control Systems Ltd (**the Employer**) and became a member of the Scheme. On 3 August 2016, Mr Y contacted WTW to obtain details of his Scheme benefit options. During the call, WTW indicated that he would not be able to take his benefits as a pension or a CETV before his normal retirement date (**NRD**) and 65th birthday in January 2018.

4. On 10 August 2016, WTW wrote to Mr Y and said:

> "The Scheme is contracted-out of the state additional pension… Any pension put into payment must be at least the same as the Guaranteed Minimum Pension (**GMP**) due to be paid from age 65… I have worked out your benefits and can confirm that, after a reduction for early payment, the resulting pension is lower than your GMP. This means that you will not be able to retire at the date you have chosen."

5. On 16 August 2016, Mr Y called WTW to query this information as it contradicted previous information he had received. WTW again explained that a pension could not be paid until his NRD, as the Scheme had a GMP which had to be paid in full. On 23 August 2016, WTW wrote to Mr Y and said: “You have the option of: Leaving your benefits in the Scheme; or Transferring the value of your benefits to another registered pension…”

6. On 20 September 2016, a telephone call took place between Mr Y and WTW. WTW said he could leave his benefits in the Scheme until NRD or transfer them to another plan, which would give more flexibility; for example, the ability to take some of the benefits and leave the rest. It said it would send Mr Y a CETV quotation.

7. On 3 October 2016, WTW sent Mr Y a CETV quotation for £49,640 (**the 2016 quotation**). The accompanying statement of entitlement quoted a total Scheme pension at the date of leaving of £1,416.98 per year. The covering letter said:

> “If we receive the ‘Transfer agreement’ and financial advice confirmation after the guarantee expiry date of 3 January 2017, we will work out the transfer value again and it may be higher or lower… If the final transfer goes up, or goes down by less than 10% of the value shown on the statement, we will go ahead and pay the transfer value. Otherwise, we will issue a new quotation. We will issue a new quotation in all cases if these documents are received more than one month after 3 January 2017.”

8. In July 2017, Mr Y decided to re-locate from Scotland to England. Eventually, this would involve: selling his main property; selling a second property; buying a new property; incurring various costs associated with buying and selling the properties; moving house; and making home improvements. The move completed in September 2017.

9. On or around 6 January 2018, Mr Y called WTW and requested details of his Scheme benefit options, including a CETV quotation.

10. On 21 February 2018, WTW sent Mr Y a retirement pack. However, it did not include all the options requested, specifically a CETV quotation, and some of the figures were wrong. WTW said it would look into this, provide corrected figures and a CETV quotation.

11. In January, February and March 2018, there were several telephone calls, between Mr Y and WTW, as he tried to obtain the benefit options and information he required. Then, in February 2018, Mr Y again requested a CETV quotation and was verbally told this would be about £25,000. There is evidence that some telephone calls and emails went unanswered and that responses were not provided upon request.

12. On 19 March 2018, having been unable to obtain a CETV quotation and answers to his queries, Mr Y complained to WTW. Briefly, he said that the information in the retirement pack, and some information received by telephone, contradicted the 2016 quotation. He requested full details of his options.

13. In April and May 2018, there were further telephone calls, between Mr Y and WTW, as he tried to obtain the benefit options and information he required. There is evidence that further telephone calls and emails went unanswered and that responses were not provided upon request.

14. On 23 May 2018, WTW wrote to Mr Y, explaining the calculation of his benefits, his options, and the reasons the current sums differed from those previously provided. However, Mr Y remained unhappy as he did not think WTW's response answered his queries and concerns. Nor did it include a CETV quotation as requested.

15. In June 2018, Mr Y received a revised CETV quotation for £25,316 (**the 2018 quotation**). Following that, Mr Y complained, under the Scheme's internal dispute resolution procedure (**IDRP**), about various matters and the reduction in the CETV. He said he had made irreversible financial decisions in reliance on the 2016 quotation.

16. In August 2018, the Trustee responded to Mr Y under stage one of the IDRP. It apologised that he had not received the service he should have and offered £500 to recognise this. However, it did not agree that he had suffered an identifiable financial loss in reliance on the 2016 quotation.

17. Mr Y appealed. He re-iterated that he had made major decisions in reliance on the 2016 quotation. He believed the latest CETV quotation could be wrong and said he was unhappy with the length of time it was taking to resolve his queries.

18. On 1 October 2018, Mr Y spoke with WTW about his Scheme benefit options. On 5 October 2018, he received a retirement pack reflecting the options discussed. As a result, he elected to take a lump sum of £532.87 and a pension of £1,402.44, with the latter being backdated to his NRD.

19. In December 2018, the Trustee responded under stage two of the IDRP. It did not uphold the complaint but increased its offer to £750 to recognise the poor customer service provided.

Summary of Mr Y's position

- He contacted WTW in March 2016, requesting a CETV quotation and other options, but its response took about seven months. Furthermore, in August and September 2016, there were several telephone calls between him and WTW, in which he was advised that he could not transfer out until his NRD as he had a GMP. However, WTW said it would write to him a few months before his NRD to outline his options. When he received the transfer paperwork in October 2016, he thought it was a mistake as WTW had previously advised him that he could not take benefits until NRD.

- If he had not been told that he could not transfer the £49,640 in 2016, he would have done so. This would have resulted in him having a more suitable pension fund with an alternative provider with a value of £49,640. Alternatively, it would have highlighted the error.

- In January 2018, he contacted WTW to claim his pension, making clear he wanted a CETV quotation. However, there were numerous further delays and complications.

- In February 2018, on receipt of the pension pack, which omitted the requested CETV quotation, he telephoned WTW to make enquiries about the figures and was told they were incorrect; and, that new figures would be issued. During this call, WTW also advised that the 2016 quotation was possibly incorrect.

- In March 2018, he received a corrected retirement pack, but still no CETV quote; so, he phoned WTW, which was the start of long delays and various problems.

- From March to June 2018, WTW became “protective” and “evasive” and failed to provide accurate information about whom he should complain to. Not until six months after his request, in June 2018, did WTW finally issue the 2018 quotation.

- The tone of the Trustee’s response to the complaint suggests he could have taken a pension or transferred out in 2016. However, this contradicted the “advice” that he received from WTW in 2016.

- He has relocated to a more expensive area and made home improvements, which has involved costs he would not otherwise have incurred. In its response, the Trustee said there is no loss as many pensioners choose to relocate. However, he would not have relocated had he known it would leave him worse off.

- Regarding the relocation, what he set out to achieve was to replicate, in England, the lifestyle he had in Scotland. A large proportion of expenditure on the new property does not add measurable monetary value; it was just made to bring the new property in line with the old property.

- He would not have chosen to sell both his main property and second property, and move to England, had he known that the CETV of his Scheme benefits was in fact only £25,000; a “deficit” of about £50,000 in his budget. With the smaller sum he would have made considerably different financial and lifestyle decisions.

- This deficit has also resulted in loss of rental income from the sold second property, that is, about £4,800 a year or about £10,800 to date.

- His decision to move was not based entirely upon the 2016 quotation. His future spending was also based on the 2016 quotation; as was his decision to sell his second property.

- The Trustee said he has failed to provide evidence of losses incurred in reliance on the 2016 quotation. However, he has asked several times what it requires, and the Trustee has not said. Overall, his losses, as a result of reliance on the 2016 quotation, stand at about £61,000, which is the redress he seeks.

- In general, the Trustee's response ignores valid points, makes up "untruths" and is an attempt to wear him down. Nor does its response address WTW's failings. Finally, it has failed to explain whom he should complain to.

- By WTW's own admission, to obtain a CETV quotation was a drawn-out process from March to October 2016, and, it took roughly the same time to obtain a CETV quotation in 2018; considerably longer than its Service Level Agreement (**SLA**) of four weeks.

Summary of the Trustee's position

- It apologised for the difference between the 2016 and 2018 quotations. However, Mr Y's entitlement to benefits is governed by the Scheme rules; it could only pay the correct benefits in accordance with his entitlement. Under the Scheme rules and legislation, the 2016 quotation did not confer an actual entitlement to benefits.

- In any case, the 2016 quotation expired in January 2017; and, it was explicitly stated, in the covering letter to the quotation, that the amount could fall. Therefore, it was not reasonable for Mr Y to rely on receiving the same amount some years later.

- Although Mr Y claimed that he was told he could not transfer out until his NRD, it disputed this. Furthermore, the information enclosed with the 2016 quotation specifically informed him how he could transfer out if he so wished.

- Also, it did not accept that Mr Y suffered a loss in reliance on the 2016 quotation. The legal position was clear in that he must show irreversible financial losses based on reasonable reliance. In its view, he has not done this; that was, he has not shown that he would not have relocated anyway. Mr Y says he relocated in part to be closer to his children. Retirees often relocate closer to their families; it was unlikely the difference between the quotations would have changed such plans.

- When Mr Y authorised payment of his benefits in 2018, he selected a pension, not a CETV. That gave him an income of £1,402.44 a year and lump sum of £532.87; the 2016 quotation was for a pension of £1,416 with no mention of a lump sum. Given that there was less than £20 difference between the pension in the 2016 quotation and the pension he took in 2018, it was hard to see how he could reasonably have made major decisions which he would not have made, had the 2016 quotation been correct.

- Since his appeal, WTW has spoken with Mr Y about his benefit options, including why some options were unavailable. However, it accepted that the level of service provided by WTW fell short. In general, it agreed that there were delays dealing with Mr Y's requests, and complaint, and apologised for the distress and inconvenience caused; hence the offer of £750.

- Once Mr Y confirmed how he wanted to take benefits, these were backdated to January 2018, that was, before his complaint. Therefore, there was no financial loss as a result of any delays.

Summary of WTW's position

- In August 2016, after Mr Y requested his benefit options, it wrote to him saying: "…after a reduction for early payment, the resulting pension is lower than your GMP. This means that you will not be able to retire at the date you have chosen."
- However, shortly thereafter, WTW wrote to him and said he could either: (a) leave his benefits in the Scheme; or (b) transfer them to another scheme.
- In short, although WTW told Mr Y that he could not take a pension at that time, there was no sign that it said, as he has alleged, that he could not transfer out. In any event, it received no transfer-out forms at the time or by the deadline.
- There was insufficient evidence to support Mr Y's claim of financial loss in reliance on the 2016 quotation. However, it acknowledged that there were delays dealing with his queries and concerns, therefore it endorsed the Trustee's offer of £750.

Adjudicator's Opinion

20. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised below:-

    - It was accepted by the Trustee and WTW that the 2016 quotation was incorrect; so, there was no dispute that maladministration had occurred. (The 2016 quotation was maladministration by WTW. However, the Trustee has responsibility for any acts or omissions by WTW.)
    - The Adjudicator did not think that it was unreasonable that Mr Y did not realise that the 2016 quotation was incorrect. Nor was it unreasonable that he did not contact WTW to check whether it was correct. As the Trustee's professional administrator, it was for WTW to provide accurate information about Mr Y's Scheme benefits.
    - Mr Y also complained that WTW wrongly stated that he could not act on the CETV; that is, by transferring out, until his NRD. The Trustee and WTW dispute this. The Adjudicator agreed with the Trustee and WTW. It appeared that although WTW did tell Mr Y that he could not take a pension until his NRD, it did not tell him that he could not transfer out straight away.
    - As outlined at paragraph 5 above, WTW's letter of 23 August 2016 made clear that Mr Y had two options: that is; to leave his benefits in the Scheme; or to transfer them to another scheme. The Adjudicator accepted that the distinction between: (a) taking a Scheme pension (that is, an income) from 2018; and (b)

transferring his Scheme benefits (that is, a lump sum), at that or any other time, could have been made clearer. However, the Adjudicator did not believe that WTW gave Mr Y incorrect information about transferring his benefits. Further, as outlined at paragraph 7 above, the 2016 quotation included details concerning transferring out and the requirements. The Adjudicator accepted that Mr Y might have been confused on why he had received a quotation for an immediate transfer-out after apparently being informed that he would have to wait. However, it would have been possible for him to have queried this.

- Mr Y referred to WTW's information, and the 2016 quotation in particular, as being "advice"; and, he said that the 2016 quotation was "guaranteed". However, there was no question of WTW's having given advice; it only provided a statement of the CETV of Mr Y's Scheme benefits at the time. It also made clear that he should seek independent financial advice about transferring.

- Although the 2016 quotation was guaranteed, it was not guaranteed indefinitely. As outlined at paragraph 7 above, the cover letter to the 2016 quotation made clear that if the necessary documents, including a transfer agreement and confirmation of financial advice, were received after 3 January 2017, the CETV would be re-calculated. In addition, if the re-calculated CETV fell by 10% or more, a new quotation would be issued. Finally, if the documents were received more than a month after 3 January 2017, a new quotation would be issued, regardless of whether the amount had changed or not.

- Mr Y said he decided to relocate in July 2017 based on the 2016 CETV quotation. In the Adjudicator's view, it was not reasonable for him to rely on receiving a CETV of about £50,000 nine months after the quotation was issued, and about six months after it expired; it was on this point that his main claim failed.

- Mr Y had set out his thought process in relation to re-locating. In brief, he said he set out to replicate, in England, the standard of living he had in Scotland. In this context, he expected to be able to defray most if not all of the costs associated with re-locating, and improving the new property, by way of the CETV of about £50,000.

- The assessment of whether Mr Y had incurred, or would incur, a total loss as a result of re-locating, was complex. On the one hand, there were various costs, including but not limited to: the costs of selling two properties; foregoing rental income from the second property; buying a new property; moving to the new property; making improvements to the new property; and, living for an indefinite period in a more expensive location. On the other hand, there were various benefits, including but not limited to: the sales proceeds from the two properties; the reduced tax liability from having one property rather than two; the benefits that came with living in an improved property; and the benefits that came with spending his retirement closer to family.

- In the Adjudicator's view, it was impossible to say with certainty what Mr Y would have done had he received a correct CETV quotation in 2016. However, on the balance of probabilities, and without the benefit of hindsight, Mr Y would still have relocated; albeit the relocation might have been more modest. For example, he might have bought a less expensive property and made fewer home improvements. However, the Adjudicator did not think Mr Y could demonstrate that he would not have relocated at all. In any event, the £50,000 "deficit" Mr Y had referred to was illusory. Not only was the sum incorrect, but Mr Y would have been unable to access more than 25% of any transfer sum tax-free; the rest would have been subject to tax at his highest marginal rate.

- In summary, it was not reasonable to rely on the 2016 quotation about nine months after it was issued and about six months after it had expired. Furthermore, the evidence did not support Mr Y's assertion that detrimental reliance flowed directly from the incorrect information.

- Mr Y also complained about delays and poor customer service following his requests for a CETV quotation and his benefit options. First, from March to October 2016; and second, from January to June 2018. The Adjudicator agreed that it took too long to provide the information, including the CETV quotations, which should normally be issued within three months of a request. There was evidence that WTW failed to promptly provide Mr Y's benefit options upon request; and that promised call backs and other responses failed to materialise promptly.

- Furthermore, there was evidence of other customer service issues. For example, WTW provided conflicting information regarding whether Mr Y had one pension fund or two, it failed to clarify to whom Mr Y should complain and a representative of Mr Y's employer, not WTW, responded to the complaint.

- The Adjudicator referred to the Ombudsman's guidance on "redress for non-financial injustice". This provided that an award of £1,000 was payable where there had been: a serious level of distress and/or inconvenience that had materially affected the Applicant; had occurred on several occasions; there was a lasting effect over a prolonged period; and the Respondent was slow to put matters right. In the Adjudicator's view, all of these factors applied to Mr Y's case.

- Therefore, it was the Adjudicator's opinion that the complaint should be upheld in part. To recognise the serious distress and inconvenience Mr Y had suffered as a result of WTW's poor customer service, the Trustee should award him a total of £1,000.

21. Mr Y did not accept the Adjudicator's Opinion and made the following points:-

    - WTW has not provided any explanation of why the error in calculating the 2016 quotation occurred. He believes there was "possible foul play by WTW to cover up this error when they could have easily alerted [him] in a timely manner upon discovery of their gross negligence."

- The reason for the error is intrinsic to his claim for financial loss. The grave nature of the error negates any caveat relating to fluctuations in financial statements, which might be expected. Such fluctuations could be expected to be within a 20% range; whereas the difference in the figures provided for him is 98%.

- He referred to the financial advice provided by WTW during telephone calls and made allegations regarding the financial advice.

- The Adjudicator's findings were "made in hindsight". They applied "future evidence to decisions which were made in the past". This approach was not reasonable and lacked consideration of his position and bore no relation to budgeting, spending, and definable loss.

- He disagrees that the 2016 quotation was guaranteed; his belief was that he could do nothing with his pension before NRD, as suggested by WTW.

- The Adjudicator's assessment of whether he suffered financial loss was incorrect as he has "chosen examples of intangible nature." His property in Scotland was "far more superior [sic] to the home purchased in Beverley".

- The assessment of whether a loss has occurred is not complex. His relocation budget is no different to any other type of budgetary planning. His calculations took into account the £49,640. Like any budget, if income changes, spending must change to avoid overspending. In his case, the income fluctuations were not known until after the spending had occurred.

- He reiterated that had he been provided with the correct 2016 quotation he would not have made a decision to re-locate.

- He does not dispute that he was told, in October 2016, that he could transfer out. He had already decided to wait until he was 65. He had taken another pension some years before and taken a 25% tax free cash sum. He was aware that tax relief would not extend to a second lump sum from the Scheme. His intention was to transfer his Scheme benefits at age 65 and drawdown on the funds.

- His accountant advised him that transferring-out would be best option, allowing him to draw down and that he could not access more than 25% of any transfer tax-free. He had already accessed 25% under another pension scheme.

- Poor customer service provided by WTW was a "deliberate ploy" and he was a "victim from a WTW vendetta [sic]." He does not accept the £1,000 award recommended by the Adjudicator as it is not sufficient. His wife has also suffered terribly during this process and this should also be considered.

- At the time of receiving the 2016 quotation, he was still a resident in Scotland. He would like to know whether the Adjudicator has explored gross negligence, as he believes there are no exclusions to claim for this under "Scots law".

- He referred to the previous cases determined by the Ombudsman, which, he believes, have a bearing on his complaint.

22. The Trustee accepted the Adjudicator's Opinion and made the following points:-

- The error, which resulted in the 2016 quotation being overstated, was due to a failure to: "account for the fact that franking[1] should have applied to Mr Y's pre 85 excess [pension]… for members who left pensionable service on or after 1 January 1985, anti-franking legislation would have prevented this. However, that legislation does not apply to members who left before 1 January 1985 like Mr Y."

- It rejected Mr Y's claim for financial loss as Mr Y had failed to demonstrate that he had reasonably relied on the 2016 quotation to his detriment.

- There was no mention of the 20% range for changes in the transfer value referenced by Mr Y, nor did it refer to "fluctuations in financial statements." The quotations informed members that the value may change.

- Mr Y said that WTW provided him with financial advice and made accusations in relation to this. However, there is no evidence that WTW provided Mr Y with financial advice as it is not authorised to do so. Mr Y may wish to contact the Financial Ombudsman Service regarding any financial advice he may have received.

- It disagrees with Mr Y's assertion that the correct transfer value was for approximately half the amount of the 2016 quotation. Mr Y "may be comparing the one-off transfer value with the quotation for an annual pension at NRD; however, these figures are not comparable as the annual pension would continue to be paid every year until his death."

- It was not reasonable for Mr Y to have relied on the 2016 quotation after the expiry of the guaranteed period.

- WTW did not inform Mr Y of the error in the 2016 quotation, as it only became aware of the error when he queried the discrepancy between the two quotations.

- Mr Y seems to ignore the gains he has made in that, while he lost the rental income from his second property, he profited from the money paid to him from the sale of the property.

- It reiterated that WTW informed him that although he could not claim his pension before NRD, he could transfer out before NRD.

[1] Franking refers to a method adopted by schemes where one tranche of benefits is offset against increases to another. Anti-franking legislation did not come in to force until 1 January 1985. The legislation prohibited the practice of offsetting pre-retirement increases to the GMP against the non GMP pension. It did not apply to scheme members who left before 1 January 1985.

- Mr Y has been in receipt of the correct pension so a claim for the incorrect figures would be “double-recovery.”

- It accepted the Adjudicator’s recommendation to pay Mr Y £1,000 to recognise the serious distress and inconvenience caused.

23. The complaint was passed to me to consider. I agree with the Adjudicator’s Opinion and note the additional points raised by all parties.

Ombudsman’s decision

24. Where an applicant brings a complaint based upon having been given incorrect information, I will usually consider two legal concepts: ‘negligent misstatement’ and ‘estoppel’. I will also consider whether there has been ‘maladministration’.

25. The starting point where incorrect information has been provided is that a scheme is not generally bound to follow the incorrect information - a member is only entitled to receive the benefits provided for under the scheme rules. For example, if trustees have given inaccurate early retirement quotes, the quotes are not generally considered to be binding.

26. I will provide redress following incorrect information if it can be shown that financial loss has flowed from the incorrect information given. For example, the member may have acted differently in the expectation of receiving the higher benefits, such as retiring early.

    With regard to estoppel, I will not allow either party to rely on a fact contrary to that which they have previously represented, or contrary to a common assumption that something is accurate, if it would not be fair to do so. This may mean that a respondent will be prevented from arguing that something that they said before was wrong and will, instead, have to provide benefits as though what was said was accurate.

27. The Trustee has agreed that the 2016 CETV quotation was incorrect and caused Mr Y distress and inconvenience, so there is no dispute that there has been maladministration.

28. A complaint of negligent misstatement must be based upon an inaccurate statement, usually called a ‘representation’. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.

29. In Mr Y’s case, the representation was the 2016 quotation for £49,640. The Trustee has explained that this figure was incorrect because it took no account of the fact that the Scheme applied franking in the case of members who had left before 1 January 1985. This is not something of which Mr Y could reasonably be expected to be aware.

However, it remains for me to consider whether Mr Y has been able to show that he relied to his detriment on the incorrect 2016 quotation.

30. Mr Y has stated that he made a decision to move home based on the 2016 quotation. However, Mr Y did not relocate until some seven months after the 2016 quotation had expired. If, as he has suggested, the CETV of his Scheme benefits was an important part of his planning, I would have expected him to obtain a more up to date quotation; it was unreasonable for him to have relied upon it. In fact, the evidence indicates that there were other factors in Mr Y's decision-making; for example, moving closer to his family.

31. It is also the case that the CETV of £49,640.32 would not have been paid directly to Mr Y as a lump sum, even if it had been correct. Rather, a CETV is paid to another pension arrangement in order to transfer liability for benefits between schemes. I note that Mr Y has said that his accountant had advised him that he could not access more than 25% of any fund value. He has also stated that he was of the view that he would not be able to take a tax free cash sum from the Scheme.

32. In any event, Mr Y did not take any steps to transfer his pension rights from the Scheme, either in 2016 or in 2018. He has previously stated that he did not transfer his pension benefits in 2016 because WTW had told him he had to wait. I find this difficult to reconcile with the fact that Mr Y was told, on 23 August 2016, that he had the option of "Transferring the value of your benefits to another registered pension". In addition, he was provided with a CETV quotation in October 2016; albeit for an incorrect amount. Mr Y does not appear to have sought any clarification from WTW, despite this information being contrary to his stated understanding of the situation. I note that he now says that he does not dispute being told that he could transfer in 2016.

33. Mr Y has also said that he had decided, prior to the 2016 quotation, not to transfer until his 65th birthday and then use the funds for drawdown. Mr Y does not appear to have taken any steps to ascertain what level of future income he might have expected through transfer and drawdown. On that basis, Mr Y appears to have been willing to take the risk that the future income he could secure, either from the Scheme or from an alternative provider, was not known.

34. Mr Y says that his property in Scotland was worth more than his property in Beverley. However, this is speculative, as the housing market can be volatile; this would always have applied regardless of the incorrect CETV quotation. The same is true of the income from Mr Y's second property. He has said that he has lost income in the region of £4,800 per year following the sale of this property. But he would have lost this income on the sale of the property regardless of the incorrect CETV quotation. Some, at least, of the loss of income will have been offset by the sale proceeds on the property.

35. Mr Y appears to be arguing that he was willing to forego this rental income on the basis that he could replace it with income from the transfer of his Scheme benefits at age 65. Effectively, since he says he made this decision prior to the 2016 quotation,

he is saying that he was willing to forego the rental income and take a risk on replacing it with an unknown level of income at age 65.

36. With regard to future income, I note that Mr Y received a quotation in 2018, when he was approaching age 65, which showed an annual pension of £1,402.42 and a lump sum of £532.87. He opted to receive the annual pension. The annual pension which had been quoted in 2016 was £1,416.98. Given that the difference in annual pension quoted between 2016 and 2018 quotations was less than £20, I cannot conclude that the incorrect information provided in 2016 influenced Mr Y's decision to forego future income from his rental property.

37. In summary, I do not find that Mr Y has been able to show that he relied, to his detriment, on the 2016 quotation in making his decision to move home.

38. I have also considered whether the Trustee, is estopped from going back on the incorrect information. The type of estoppel which is most likely to arise in these cases is estoppel by representation. The requirements for an estoppel by representation are similar to those for negligent misstatement; namely:-

- Did the respondent make a clear representation to the member?
- Was the representation false?
- Did the member reasonably and foreseeably rely upon the statement?
- Would the member suffer detriment as a result of relying on the statement if the respondent is not held to it?
- Would it be unconscionable for the respondent to go back on what was said?

39. The effect of an estoppel is that the Trustee would be held to comply with the incorrect information. This would mean that Mr Y would receive more than he is technically entitled to receive under the Scheme rules. However, succeeding with an estoppel argument presents a high hurdle for a claimant to surmount. The Courts have spoken of the most important element being to show that it would be unconscionable (extremely or shockingly unfair) to go back on the incorrect information.

40. I do not find that the necessary elements for an estoppel are present for Mr Y's case to succeed. The 2016 quotation was not a clear representation to Mr Y that he would receive a lump sum of £49,640.32. And, for the reasons given in relation to negligent misstatement, he has not been able to show that he relied on the 2016 quotation in taking the decision to move home and/or sell his second property. Finally, I do not find that it would be unconscionable, in the circumstances, for the Trustee to be allowed to go back on the 2016 quotation.

41. Mr Y has referred to previous Determinations that may have a bearing on his complaint, however every case is different as it is considered on its own merits.

42. I agree that there has been an error which caused a loss of expectation which is a non-financial injustice. The Trustee has agreed to pay Mr Y £1,000 in recognition of the serious distress and inconvenience caused. This is reasonable in the circumstances and, if Mr Y wishes to accept the offer, he should contact the Trustee directly.

43. Therefore, I do not uphold Mr Y’s complaint.

Anthony Arter

Pensions Ombudsman
30 December 2020