

Ombudsman's Determination

Applicant	Mr K
Scheme	The Former Dock Workers Pension Fund (the Fund)
Respondent	The Fund Trustee (the Trustee)

Outcome

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

Complaint summary

2. Mr K is unhappy that the Trustee has refused to recalculate his cash equivalent transfer value (**CETV**) on the more generous calculation basis that applied prior to the Fund triggering wind-up.

Background information, including submissions from the parties

3. Transfer value assumptions are set by the Trustee having taken advice from the Fund Actuary. As relevant rule 20(a), 'Transfer to and from Other Schemes', of the Fund's 2017 Consolidated Rules (the **2017 Rules**) says:

“...a transfer value payment of such amount as the Trustees determine having taken advice from the Actuary (having regard to [the Member's] Cash Equivalent unless the Trustees decide that a more generous basis may be used)...”
4. The Fund is an industry-wide defined benefit occupational pension scheme.
5. Mr N became a deferred member and was granted a five-year service credit when the Fund closed to future accrual in August 2013.
6. In May 2017 Mr K was quoted a CETV of £922,124 in respect of his accrued defined pension and a CETV of £2,186.52 in respect of his AVCs. The CETV for his defined pension was guaranteed for 3 months. No guarantee applied to his AVCs. Mr K decided not to transfer out.

7. In October 2017 the Trustee fully secured all members benefits in a bulk annuity ('buy-in') policy with Pension Insurance Corporation (**PIC**).
8. In March 2018 Mr K was quoted a CETV of £923,549 in respect of his accrued defined pension and a CETV of £2,386.11 in respect of his AVCs. The CETV for his defined pension was guaranteed for three months. No guarantee applied to his AVC's. Mr K decided not to proceed with the transfer.
9. In June 2018 the Trustee received actuarial advice recommending that it adopt PIC's transfer value factors from the date the Fund's wind-up was triggered, as this was "the most practical and fairest approach when looking at the Fund's whole membership".
10. The Fund commenced winding-up on 14 June 2018. At that point the Fund had surplus assets, which the Trustee resolved should be used to augment members' benefits. The Trustee decided that members who transferred-out on PIC's terms would receive an uplift to their transfer value to reflect the uplift to the pension of deferred and pensioner members that was expected to be provided out of the surplus assets nearing the completion of the Fund's winding-up. Based on actuarial advice the uplift was fixed at 3.1%.
11. In July 2018 the Trustee sent a letter and question and answer booklet to all members, including Mr K. This informed members that:-
 - The Fund had commenced winding-up.
 - The buy-in policy with PIC had secured full benefits for members who had left pensionable service after July 1989.
 - The Trustee expected there to be a Fund surplus. This would be used to increase all pensions in payment and deferred pensions towards the end of the Fund's winding-up. The uplift was estimated to be 2.5%.
 - PIC would issue an annuity policy to each member shortly after the Trustee had confirmed the pension uplift.
 - The Trustee had decided that transfer values quoted after the Fund had started to close but before the uplift date would include an allowance for the estimated uplift.
12. In September 2018 Mr K was quoted a CETV of £862,807.82 in respect of his accrued defined pension and a CETV of £3,686.77 in respect of his AVCs. The CETV for his defined pension was guaranteed for 3 months, used PIC's transfer value factors and included a 3.1% uplift. The CETV for Mr N's AVCs was not guaranteed.
13. Mr K complained about the reduced CETV for his defined pension. He said he should have been told that CETVs would be reduced once the Fund commenced winding-up.

He asked the Trustee to recalculate his CETV on the more generous transfer basis that applied when he received the March 2018 quotation.

14. The Trustee rejected Mr K's complaint. The Trustee said:-

- It was common practice for pension scheme trustees to update transfer value factors after every actuarial valuation, or other significant event, to make sure that the factors were fair both to those transferring out and members remaining.
- The main reason for the lower quoted CETV was the adoption of PIC's transfer value factors when the Fund commenced wind-up. It made the change on actuarial advice, so the interests of remaining members would not be adversely affected by any deferred member transferring out. It also resolved that members who transferred out on PIC's terms would receive an uplift to their transfer value to reflect the uplift to remaining members pensions that was expected to be provided out of the Fund's surplus assets.
- It was keen to manage members' expectations as to the likely level of increase to their pensions and it was agreed that a conservative estimate of 2.5% would be communicated.
- Mr K had received two CETV quotations prior the adoption of PIC's transfer value factors but did not accept either offer, the guarantee periods for which had expired.
- Pension Trustees were not required to, and generally did not, notify members of their pension schemes in advance of changes to transfer factors. But even if it had said something in its July communication the guarantee period of Mr K's March 2018 CETV had already expired.
- It did not inform members that CETVs would be less on the revised transfer basis because it did not want deferred members to feel rushed into taking a transfer, a decision which for most members was likely to be a wrong decision.
- It had been clear that all members should equally share in any Fund surplus. If it agreed to calculate Mr K's CETV on a different (higher) basis then it would be preferring Mr K over all other members.

15. In November 2018 Mr K signed a transfer instruction. The same month PIC paid Mr K's chosen pension provider £862,807.82.

16. In March 2019 PIC paid a CETV of £4,553.42 in respect of Mr K's AVCs to the same chosen pension provider. The same month PIC issued individual policies to discharge the benefits of all remaining members of the Fund.

17. The wind-up of the Fund is now close to completion.

Adjudicator's Opinion

18. Mr K'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:-
- Under Rule 20 of the 2017 Rules, transfer value assumptions are set by the Trustee having taken actuarial advice.
 - The Trustee had to adopt PIC's transfer factors at some point between the triggering of the Fund's wind-up and when the buy-in policy with PIC was expected to be converted to individual annuity policies in each member's name.
 - On actuarial advice, that it was probably the most practical and fairest approach when looking at the Fund's whole membership, the Trustee adopted PIC's transfer value factors with effect from the date the Fund's wind-up was triggered.
 - As the Fund was in surplus at that date the Trustee resolved, again based on actuarial advice, that transfers calculated based on PIC's transfer factors would receive an uplift fixed at 3.1%, then being the best estimate of the likely percentage uplift that would be provided for all members nearing the completion of the Fund's wind-up.
 - The Trustee was not required to communicate the change to the transfer value basis prior to its adoption or warn that transfer values would be lower once the Fund's winding-up had commenced.
 - Mr K had three months in which to accept the March 2018 CETV. But chose not to do so. The Trustee was under no obligation to honour the transfer value beyond its guarantee date.
19. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr K for completeness.

Ombudsman's decision

20. Mr K says he was totally unaware of any change to his pension surrender value.
21. But the CETV quotations that Mr K respectively received in May 2017 and March and September 2018 each stated the period for which the defined pension CETV was guaranteed.
22. Mr K says someone should have informed him of the transfer changes "that would lead to its devaluation or being creamed off by PIC for want of other words."

23. But, as the Adjudicator said, the Trustee was under no obligation to communicate the change to the transfer value basis prior to its adoption or warn that transfer values would be lower on the new basis.
24. Mr K says PIC was quick to entice him with the promise of a 2.5% enhancement, but withheld information about his fund being devalued. He says this was an abuse of its position of trust.
25. In actual fact the CETV for Mr K's defined benefits was enhanced by 3.1% based on the Fund's estimated surplus. The Trustee agreed this in consultation with the Fund's actuary. PIC was not involved in the matter. The Trustee's action was reasonable and does not amount to maladministration.
26. Mr K asks how PIC is entitled to pilfer the enhancement of 5 pensionable years he received when the Fund ended.
27. But the CETV paid to Mr K's chosen pension provider in November 2018 included the enhancement to Mr K's defined pension, as did the CETV quotations he received in May 2017 and March 2018.
28. Mr K chose not to transfer his benefits after receiving the March 2018 quotation. The Trustee was under no obligation to honour the CETV after its guarantee period had expired.
29. Therefore, I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
30 August 2019