

Ombudsman's Determination

Applicant	Mr H
Scheme	Barry Wehmiller International Retirement Benefits Scheme (the Scheme)
Respondents	Willis Towers Watson (the Administrator) Link Pension Trustees Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr H is unhappy with the length of time taken by the Administrator to process his cash equivalent transfer value (**CETV**) illustration request, and also the value of the CETV illustrations that he received. Mr H would like compensation for the distress and inconvenience caused and for the loss of opportunity to transfer his Scheme benefits.

Background information, including submissions from the parties

3. Mr H requested a CETV illustration on 13 November 2016.
4. On 9 December 2016, the Trustee wrote to Mr H to inform him that the Scheme had started to be wound up on 23 November 2016, and that the employer was making a final contribution.
5. The Administrator wrote to Mr H on 20 January 2017 and said that:-
 - It would process his request for a CETV illustration as soon as possible. There had been a delay in providing this as it needed to take into account a final contribution from the employer.
 - Previously all transfer values had been reduced to reflect the funding shortfall in the Scheme, but it now expected higher transfer values to be available.
 - It would provide Mr H's CETV illustration in late February.

6. Mr H contacted the Administrator at the end of February 2017, as he had not received the CETV illustration. The Administrator confirmed that it would be issued in the next four weeks.
7. In early April 2017, Mr H contacted the Administrator, as he had still not received the CETV illustration. The Administrator said that it had received transfer outcomes from the Scheme Actuary on 31 March 2017, and that Mr H would receive his transfer pack soon.
8. On 11 April 2017, the Administrator sent Mr H a CETV illustration. The transfer value of £58,795 was guaranteed until 30 June 2017. The illustration referred to the letter the Trustee had sent in December 2016, and advised Mr H to:-

“... carefully consider whether to take a transfer value as it is affected by the Scheme’s winding up and may change over time – in particular it will be possible to take a transfer value after your benefits have been transferred to an insurance company (as long as your pension has not started to be paid to you), and we would expect the insurer to use a different methodology to calculate the transfer value payable.”
9. In January 2018, Mr H contacted the Administrator, as he had decided to proceed with the transfer. The Administrator said that:-
 - The Scheme did not have enough assets to meet the full level of members’ benefits.
 - The Scheme was not going to be transferred to the Pension Protection Fund (PPF), as it expected to be able to provide benefits greater than those provided by the PPF.
 - It was possible that an insurance company would take responsibility for the Scheme. However, it could not provide a time scale of when this would happen.
 - In order for Mr H to proceed with the transfer, he would have to return the fully completed transfer documentation that was sent to him in April 2017.
 - Once it had received the documentation it would recalculate the transfer value and provide a new CETV illustration. It estimated that this would take 10 to 15 working days.
 - Mr H was unable to request a new transfer value until 11 April 2018.
10. In January 2018, Mr H applied for a personal pension with a new pension provider. He received confirmation on 22 January 2018 that his application was being processed.
11. Mr H’s new pension provider confirmed that it had received the transfer documentation that he had sent on 12 March 2018. It also told Mr H that the

Administrator had said that, as the transfer documentation was received outside the guaranteed date for the transfer value, a new CETV illustration had been requested. This would take two to three weeks to be sent to Mr H.

12. The Trustee wrote to Mr H on 24 April 2018, to provide an update on the winding up of the Scheme. It said that:-
 - It had signed a Bulk Purchase Annuity Agreement with an insurance company.
 - Calculations to determine final benefits for individuals had not taken place so it could not confirm the final entitlement.
 - It expected the final benefit entitlements for members to be between the PPF level of benefits and members' full entitlements.
 - The Trustee would first secure PPF level benefits for all members, and then use the remaining assets to secure additional benefits for members.
 - The benefits would be allocated in accordance with legislation and the approach chosen would ensure additional benefits would be applied consistently for all members.
 - The insurance company would issue individual policies confirming the benefits once the approach had been confirmed.
13. In August 2018, Mr H contacted the Administrator for an update. The Administrator said that it was waiting to receive his finalised CETV illustration from the insurance company. It apologised for the delay and said that it would prioritise Mr H's request.
14. At the end of September 2018, Mr H again contacted the Administrator, as he had not received the CETV illustration. The Administrator sent Mr H a copy of the CETV illustration and said that it had been sent to Mr H's financial advisor on 22 August 2018. The CETV illustration showed that Mr H had a guaranteed transfer value of £32,257. The Administrator also made the following comments:-
 - As previously communicated, following the agreement in March 2018 to secure member's benefits using a new insurance provider, the CETV illustration was based on the insurer's calculation methodology.
 - After the guarantee date, the Trustee would not provide a CETV illustration until 12 months after the date Mr H had requested the previous one.
15. In November 2018, Mr H complained to the Administrator. He said that:-
 - He was unhappy that the CETV illustration issued in August 2018, showed a significant reduction in value from the one issued in April 2017.
 - There had been a number of delays in providing the CETV illustration.

- He had been told that he had to wait 12 months after the CETV illustration date before he was able to request a new one, this was incorrect.

16. In response to Mr H's complaint, the Administrator said that:-

- Mr H had requested a CETV illustration on 13 November 2016. This was issued on 11 April 2017, and guaranteed until 30 June 2017. The delay was a result of the Scheme being wound up and the employer making a final contribution. As a result of this, the Trustee and the Scheme Actuary had to review the transfer basis. The contribution from the employer allowed higher transfer rates to be available.
- It had received completed transfer paperwork from Mr H's new provider on 15 March 2018. On 21 March 2018, it was informed that the Scheme had entered into a buy-in agreement with an insurance provider. The transfer request was put on hold as the Trustee had to review the transfer basis. The new CETV illustration was provided to Mr H's financial adviser in August 2018. The new transfer basis led to a significant reduction in value in comparison with the CETV illustration received in 2017.
- The reason for the reduction was because the factors used by the new insurer to calculate the value were lower than those used in 2017. The value from the new insurer reflects the benefits secured with it, while the value given in 2017 was an estimate of what each member was likely to receive when the Scheme was wound up.
- The Trustee is responsible for deciding the transfer value basis. As the Scheme was winding up, the Trustee had to act in the best interests of all members. If it had used the same transfer basis as it had done in 2017, there would have been an impact on the assets available to other Scheme members.
- The CETV illustration received in 2017 stated that the transfer value may be affected by the Scheme winding up, and that the value could change over time.
- As it had received the completed transfer paperwork after the guaranteed date, it was under no obligation to honour it.
- It was unfortunate that it had received Mr H's transfer paperwork around the same time as the Scheme was entering into the buy-in agreement with the insurer, but this was unforeseen when it had responded to Mr H's queries.
- It was sorry that it had not responded to Mr H's complaint as quickly as it could have done and that it had not kept him up to date about his transfer request.
- The Scheme was unable to pay the transfer value quoted in April 2017.

17. Mr H complained under the Scheme's internal dispute resolution procedure (**IDRP**). The Trustee said that:-

- Mr H was not provided with a CETV illustration within three months as the Scheme was being wound up. However, given the circumstances the Regulations allowed it to extend the period up to a maximum of six months.
- Bulk purchase annuity agreements were secured with the new insurer on 12 March 2018. The Trustee decided that the transfer should reflect the benefits secured with the new insurer.
- Mr H had contacted the Administrator in January 2018, to ask some questions about the status of the Scheme and transferring benefits. Mr H was incorrectly told that he would have to wait until April 2018 to request a new transfer value. Mr H was entitled to request a new CETV illustration from 13 November 2017.
- If Mr H had requested a CETV illustration in February 2018, the Trustee would have had three months to issue one. As it had been expecting the bulk purchase annuity to be in place in March 2018, it would have waited until this was completed before issuing a CETV illustration. The CETV illustration would have been on the same basis used to calculate the August 2018 CETV illustration. So even had the errors not been made, Mr H's August 2018 CETV illustration would have been the same.
- In recognition of the distress and inconvenience caused, it would offer Mr H £500.

18. Regulation 6 of the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (**the Regulations**) states:-

"(1) Subject to paragraph (1A), the guarantee date in relation to a statement of entitlement must be –

- (a) Within the period of three months beginning with the date of the member's application under section 93A of the 1993 Act (salary related schemes: right to statement of entitlement) for a statement of entitlement; or
- (b) Where the trustees are unable to provide a statement of entitlement for reasons beyond their control within the period specified in sub-paragraph (a), within such longer period not exceeding six months beginning with the date of the member's application as they reasonably require."

Adjudicator's Opinion

19. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Administrator or the Trustee. The Adjudicator's findings are summarised below:-

- The Trustee had agreed that Mr H was provided with incorrect information on when he could request a new CETV illustration, and that Mr H could have been better informed of the time it would take to provide the CETV illustrations.
- The Trustee had provided the April 2017 CETV illustration within the six months permitted by the Regulations, and it had informed Mr H of the reason for the delay.
- There were a number of occasions when the Administrator could have kept Mr H better informed in relation to his second CETV illustration request.
- In January 2018, Mr H had been incorrectly told that he would have to wait until April 2018 before he could request another CETV illustration. Whereas, he was eligible to request a new CETV illustration in November 2017. At the same time, Mr H was also incorrectly told to return the completed April 2017 transfer documentation. Both errors amount to maladministration but there was no evidence to show that Mr H had suffered financial loss as a result of receiving the incorrect information. In the Adjudicator's view, had Mr H requested a new CETV illustration, it would have been unlikely to have been issued at that time given the impending bulk purchase annuity.
- The new CETV illustration would have been calculated using the same transfer basis as the CETV illustration that Mr H received in August 2018.
- The August 2018 CETV illustration had reduced in value from the April 2017 CETV illustration, as the transfer basis had changed. This was as a result of the bulk purchase annuity. The Adjudicator thought that it was reasonable for the transfer values to reflect the benefits secured with the new insurer, given the wider impact on all Scheme members had the previous basis been retained.
- Mr H was not entitled to the April 2017 CETV transfer value as he did not return the paperwork to the Administrator before the guarantee had expired. The Trustee and the Administrator could not be held responsible for this.
- Mr H would have been caused significant distress and inconvenience by being provided with incorrect information about when he could request a CETV illustration and the lack of information surrounding when the second CETV illustration would be provided. The Trustee had offered Mr H £500 in recognition of this and the Adjudicator considered the award was sufficient.

20. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H 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 main points made by Mr H for completeness. Mr H made the following comments:-

- The Administrator had provided incorrect information about when he could request a new CETV illustration. If he had been given the correct information

he would have been able to request a CETV illustration sooner. It was likely, given the deadlines that the Administrator had provided, that had he requested the CETV illustration earlier it would have been calculated using the same calculation method that was used for the April 2017 CETV illustration. Therefore, he did not agree that he had not faced a financial loss.

- He had informed the Trustee that he was bringing his complaint to us and the Trustee had increased its offer to £1,000 for a period of three weeks.

Ombudsman's decision

21. Mr H has argued that he would have received a CETV illustration calculated on the same basis as the July 2017 CETV illustration, if the Administrator had given him the correct information. However, when Mr H first contacted the Administrator in January 2018, the Administrator told him that the Scheme did not have enough assets to meet the full level of members' benefits and that it was possible that an insurance company would take responsibility for the Scheme. Therefore, I cannot agree that the Trustee would have used the July 2017 transfer basis when calculating Mr H's new CETV.
22. In recognition of the significant distress and inconvenience caused to Mr H, the Trustee offered him £500 in its IDR response. After Mr H referred his complaint to us, the Trustee increased its offer to Mr H to £1000 for a period of three weeks. Mr H decided not to accept the Trustee's offer and therefore the offer expired. I consider the £500 that was originally offered by the Trustee is sufficient given the circumstances of the complaint. Mr H should contact the Trustee should he wish to take up the offer.
23. I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
8 April 2020