

Ombudsman's Determination

Applicant	Ms L
Scheme	P&O Princess Cruises Pension Scheme (the Scheme)
Respondents	Carnival UK (the Company) Ross Trustees Services Limited (the Trustee)

Outcome

1. Ms L's complaint is partly upheld. The Company and the Trustee shall pay an award in recognition of the non-financial injustice she has suffered.

Complaint summary

2. Ms L's complaint against the Trustee and the Company concerns delays during the retirement and transfer process. Specifically:-
 - She received a CETV of £261,782, after being denied the opportunity to take the transfer value of £278,928 that was initially quoted to her. She also missed out on the opportunity of potential investment returns on the higher transfer value.
 - The delays impacted her ability to draw down her benefits and caused her an exceptional level of distress.

Background information, including submissions from the parties

3. Willis Towers Watson (**WTW**) are the administrators of the Scheme.
4. Ms L was an employee of the Company and was a member of the defined benefit section of the Scheme, which is now closed to future accrual.
5. Active members as of 1 June 2016 were transferred into the defined contribution (**DC**) section of the Scheme administered by Zurich Insurance (**Zurich**). Scottish Widows subsequently acquired Zurich's pension and savings business and took over the administration of the DC section.
6. On 14 August 2017, Ms L attended a consultation with an occupational health adviser (the **OHA**). She acknowledged that Ms L was unfit for work.

7. On the same day, the OHA sent an email to the senior pensions & benefits manager at the Company (the **Scheme Manager**). She noted that Ms L was interested in her pension forecast and had mentioned the possibility of working part time.
8. On 31 August 2017, the Scheme Manager emailed a retirement illustration to Ms L (the **August 2017 Retirement Illustration**). Unfortunately, she did not receive the message because her email address had been mistyped.
9. On 6 September 2017, the OHA contacted Ms L to arrange a meeting to discuss her return to work. The OHA acknowledged that she had requested a pension forecast and was moving house.
10. On 8 September 2017, Ms L contacted the Scheme Manager. She asked whether the lump sum of £41,259 quoted was tax free. She also asked whether it was the maximum lump sum available; and for details of the total pension available to transfer.
11. On the same day, Ms L emailed the OHA. She said that she needed time to work out her options. She also said that she was lodging at her brother's house.
12. On 2 October 2017, the Scheme Manager emailed Ms L and attached a transfer value illustration (the **October 2017 Illustration**). He highlighted that the transfer value was not guaranteed.
13. The October 2017 illustration showed an estimated transfer value of £278,928 and included the following caveat:

“The non-guaranteed transfer value is only estimated and the final value will be recalculated at the time of your transfer.”
14. On 4 October 2017, Ms L was provided with a copy of the August 2017 Retirement Illustration.
15. Around the same time, the Trustee issued the 2017 “Annual Members’ Update” (the **Update**). It advised that “based upon actuarial advice, the factors that apply to members benefits in areas such as early and late retirement, transfer values...” had been reviewed. The Trustee explained that this was to ensure that the factors remained appropriate and that members were being offered a “fair value” of their benefits.
16. The Trustee indicated that most factors would be amended from 1 January 2018. It warned that:

“If you are requesting figures before this date but not taking any action until beyond this date, then you should be aware of potential changes to the figures.”
17. The Company has advised that member updates are issued to active members with their annual benefit statements.

18. The Trustee has explained that it is the Scheme practice to ensure that matters, such as changes in actuarial factors, are communicated to members. Consequently, Ms L would have received the Update.
19. Ms L said that she did not receive the Update. As the Company was aware that she had moved address, she assumed that it notified WTW at the time. Her post was redirected after she moved address.
20. On or around 2 November 2017, Ms L's financial advisers (the **IFA**) contacted the Company to obtain a CETV illustration.
21. On 2 November 2017, the Company requested a CETV illustration from WTW and retirement figures as of August 2017.
22. On 7 November 2017, the Company's human resources (**HR**) department wrote to Ms L and confirmed her intention to retire from the Company on 19 December 2017. HR advised that information on Ms L's pay, and pension contributions, would be passed to WTW.
23. On 28 November 2017, Ms L notified her IFA that HR had agreed her leaving date. The IFA said that they were still waiting for the Scheme to provide them with information.
24. On 13 December 2017, WTW emailed the IFA. It said that Ms L had ceased accrual on 31 March 2016. However, she retained a "salary link to her pension."
25. WTW attached a retirement illustration and a copy of the October 2017 CETV. It said that if Ms L wanted to retire, or transfer, she should confirm this to the Company. It would then provide the relevant forms.
26. On 19 December 2017, Miss L retired from the Scheme.
27. On 1 February 2018, the IFA wrote to the Company and requested information on Ms L's benefits in the Scheme including a CETV illustration. Ms L said that her IFA then made several attempts to obtain this.
28. On 14 February 2018, Ms L contacted her IFA. She explained her reasons for wanting to draw her pension via flexible drawdown.
29. In the intervening period, Ms L did not request an update from her IFA regarding her pension. Similarly, the IFA did not follow up its request for a CETV illustration.
30. On 28 June 2018, the IFA requested information in connection with Ms L's benefits in the Scheme. This included a CETV illustration and an early retirement quotation.
31. On 5 July 2018, Ms L contacted her IFA for an update.
32. On 6 July 2018, WTW sent Ms L a copy of her last annual benefit statement and a copy of the October 2017 illustration.

33. On 30 August 2018, WTW contacted the Company. It asked the Company to confirm whether Ms L was planning to retire from her normal retirement date (**NRD**) in March 2019. It also asked whether it should update Ms L's record to show that the Employer had consented to the accrual of benefits in the Scheme after NRD.
34. On 8 October 2018, WTW sent a follow up email to the Company. On the same day, the Company notified WTW that Ms L had ceased to be an employee from 19 December 2017.
35. The Company has accepted that, due to an oversight on the part of HR, WTW was not informed that Ms L had left the Scheme. WTW sent Ms L a copy of her last annual benefit statement, and also a copy of the October 2017 Illustration, on the basis that she was still an active employee.
36. On 16 November 2018, Ms L emailed the Scheme Manager and enquired about her pension.
37. On 30 November 2018, the Scheme Manager emailed Ms L and apologised for the lack of communication on the part of the Company. He acknowledged that WTW had requested information from the Company. He said he had not seen the request and apologised for this.
38. On 7 December 2018, Ms L sent a further email to the Scheme Manager and asked for an indication of WTW's timescales. Ms L emphasised that she had been without any income for a year; she said she was "getting really desperate."
39. On 7 January 2019, WTW sent a retirement illustration and a statement of deferred benefits to Ms L's home address. It also sent her IFA a copy of the correspondence.
40. On 23 January 2019, WTW provided the IFA with a CETV illustration. It showed a CETV of £261,782 (the **January 2019 CETV**).
41. On 30 January 2019, WTW emailed Ms L a copy of the January 2019 CETV.
42. On 6 March 2019, Ms L emailed her signed "pension forms" to the Company.
43. On 8 April 2019, WTW notified Ms L that it had paid a transfer of £261,782, excluding any additional voluntary contributions, to her new pension provider.
44. On 28 July 2019, Ms L complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) concerning the time it had taken to provide her with a CETV. She said that it had taken over 12 months for her to obtain this. Furthermore, the CETV was "significantly lower" than the initial quotation of £278,928. Ms L also said that when her IFA contacted WTW, her IFA could not obtain any information. This was because WTW had not been notified that she had left the Company and wished to take her pension early.
45. Ms L's IFA has informed Ms L that if she had transferred £278,928, her pension plan would have made £15,247 and would have been worth £288,498 on 5 August 2019.

The IFA has also informed Ms L that her CETV was worth £278,431 on 5 August 2019.

46. On 17 September 2019, Ms L requested an update on her complaint. The Scheme Manager then issued a response under the IDRPs on 8 October 2019. In summary, the Scheme Manager stated that:-
- Ms L was still in employment at the time she requested a CETV illustration in October 2017. WTW advised that, as she was still an active member, the transfer value could not be guaranteed. Consequently, the October 2017 Illustration was not a relevant consideration.
 - The next correspondence from her IFA was received on 28 June 2018. Neither he nor WTW could locate receipt of any correspondence before this date.
 - He acknowledged that there were delays between 30 August 2018 and 8 October 2018. He also acknowledged delays between November 2018 and January 2019, because of the time taken to calculate the CETV. However, he highlighted that Ms L was still employed at the time the October 2017 Illustration was issued. Furthermore, WTW was not asked to provide a CETV until 28 June 2018.
 - Ms L's CETV would have amounted to £258,076 if it had been calculated on 15 September 2018. That is, within three months of the request that was made on 28 June 2018. The CETV illustration provided to Ms L's IFA in January 2019 amounted to £261,782.
 - The Scheme Actuary had confirmed that the variance in the figures was due to "Small differences in market conditions" between the effective dates of the calculations. The closer Ms L was to normal retirement age, "the higher the value placed on the benefits in these market conditions, and vice versa."
 - A CETV calculated with an effective date, within three months either side of Ms L's request in June 2018, would have been lower than the CETV of £261,782.
 - He acknowledged that Ms L's journey to access her pension benefits had not been "smooth." However, he was unable to agree that she had a valid claim for financial loss.
47. Ms L subsequently complained under Stage Two of the IDRPs. She was initially offered a distress and inconvenience award of £250 in recognition of the delays in providing the CETV. Dissatisfied with the outcome, Ms L then referred her complaint to The Pensions Ombudsman's Office (**TPO**).
48. Ross Trustees Services Limited (the **Trustee**) has since been appointed the Scheme's sole trustee.
49. The Trustee and the Company have offered Ms L £1,000, for the distress and inconvenience she has experienced in connection with this matter (the **Offer**).

50. Ms L has explained that she agreed to early retirement due to issues surrounding her mental health. Instead of being helped with her pension, she was 'stymied' by the lack of communication between the Company and WTW. This matter has contributed to her failure to improve her mental health.
51. Ms L has also explained that when she enquired about taking a transfer value in October 2017, the Scheme Manager sent an email asking if she wanted to go ahead with the transfer. Unfortunately, she did not receive the email due to a typo in her email address. If the email had been sent to the correct address, she would have replied "yes." Consequently, WTW would have started looking at her case in December 2017 and would have provided a CETV by mid-March 2018. Furthermore, she would have been offered a larger tax-free lump sum and would have drawn her pension pot immediately. It subsequently "diminished" in value.
52. WTW has confirmed that if Ms L's CETV had been calculated on 15 April 2018, it would have amounted to £255,101.

Ms L's position

Summary of Ms L's comments on the retirement process:-

53. WTW run a renewal exercise annually; it requested an update from the Company on her status in the Scheme in May 2018. She considers that the Company needs proper procedures in place to keep all parties informed of the progress of pension submissions and requests.
54. HR should not be issuing outdated letters to members displaying incorrect information. In her view, the Company showed a "gross" lack of communication and failed in its duty of care in its handling of her request to take early retirement. It was aware that she was retiring, after more than 25 years' service. The Company's pension department should have offered to meet with her to discuss her options and offer advice.
55. The Company implied it was her responsibility to request information concerning her pension. The HR/pension department had an obligation to advise her of her options within two months of her retirement.

Summary of Ms L's comments on the October 2017 Illustration:-

56. When she received the October 2017 Illustration, she considered that it was "financially feasible" to take early retirement. If the correct process had been followed, WTW would have been made aware of her retirement date sometime between December 2017 and January 2018.
57. She should have been individually notified about the changes made to the assumptions used to calculate CETVs. She was "not on top of her game" at the time due to personal issues.

58. There is a lack of transparency surrounding the calculations of CETVs and changes that occur. Where an initial quote has been sent to the employee, a revised quote should automatically be sent out where a significant change has been made to the method of calculation.
59. If she had received a CETV illustration in the first quarter of 2018, she would have achieved investment returns over a longer period and built up a higher lump sum to live on in her retirement. She had to use her savings to cover her living costs. This diminished her savings and any interest she would otherwise have earned.
60. The Company's occupational health and HR/pensions department lack "Best Practice" procedures. The Company/the Trustee should ensure that:-
- A duty of care is shown to all retiring employees.
61. The Trustee should ensure that:-
- The possibility of pension fraud is highlighted to members.
 - Checks are conducted in connection with pension transfers.

Summary of Ms L's comments regarding her claim to financial injustice:-

62. The financial impact of not having access to her pension meant she had to live off her savings for over a year. This cannot be right. The "mental and physical loss" of the difference between the October 2017 Illustration, and the CETV, along with a diminished tax-free lump sum, must equate to thousands of pounds.
63. She would be willing to accept £25,000 in full and final settlement of her complaint. This would cover her calculated loss, including the loss of a pension for 12 months.

Summary of Ms L's comments regarding her claim to non-financial injustice:-

64. She has experienced exceptional distress and inconvenience. She should be compensated for this. Her calculated loss would also cover the "mental torture" she has suffered over the past three years, partly because the Company considered that she was at fault in the matter.
65. The ongoing emotional strain caused by the maladministration, and catalogue of errors on the part of HR/pension department, is "tremendous." She has given "hours and hours" of her time trying to find out what went wrong, trawling back through old emails, and compiling files of correspondence to send to TPO. In addition to time spent on her case, she spent money on ink and paper for her printer.
66. She has had sleepless nights thinking about how badly she has been treated and "stonewalled" by the Company just for pointing out the ineffectiveness of its HR/pension department. She considers that the Company let her down at a time when she was feeling very low and vulnerable.

67. The Trustee's and the Company's position:-

- The Trustee and the Company accepts that there were delays because the Company did not inform WTW that Ms L had retired.
- The occupational health team has no knowledge of the benefits payable under the Scheme. Any observation made by the team was based on its assessment of Ms L's ability to continue to do her job. It has reminded the team to refer employees to the pension department in future.
- Neither the Company, the Trustee nor WTW can trace any receipt of any correspondence from Ms L's IFA prior to 28 June 2018. They have no record of receiving a letter from the IFA dated 15 February 2018.
- It is not possible to compare a transfer value illustration which is not guaranteed with a CETV illustration. Any confusion on Ms L's part was likely exacerbated when she was sent the annual benefit statement with a copy of the 2017 CETV Illustration in error. The Trustee has apologised for this. It also explained the correct position to Ms L in the responses issued under the IDRP.
- Ms L received a slightly higher CETV. If the delays had not occurred, she would have been provided with a CETV illustration on or before 28 September 2018. If a CETV illustration had been provided in September 2018, it would have amounted to £258,076, which is less than the CETV of £261,782. On this basis, Ms L did not receive a lower CETV than she would otherwise have received. Consequently, she has not suffered any financial loss.
- The Company failed to notify WTW that Ms L had left the Company, because a junior member of the team did not apply the agreed process properly. The Company has since reviewed its HR procedures and its communication material.
- The Scheme contains provisions for an actuarially reduced early retirement pension. There are no enhanced/unreduced ill health early retirement provisions under the Scheme rules. Consequently, this was not discussed with Ms L.

Adjudicator's Opinion

68. Ms L's complaint was considered by one of our Adjudicators who concluded that Ms L had suffered non-financial injustice because of maladministration on the part of the Company and the Scheme which would merit an award. The Adjudicator's findings are summarised below:-

- TPO cannot consider employment matters as they fall outside the scope of the Ombudsman's jurisdiction.
- The Adjudicator agreed that the provision of the October 2017 Illustration, in July 2018, may have reinforced Ms L's understanding that the transfer value displayed

in the illustration would be available to her on transfer. However, the Adjudicator was not persuaded that Ms L has a valid claim to the October 2017 Illustration.

- Under the Pension Schemes Act 1993, (the **Act**), a member who ceases pensionable service acquires a right to a “cash equivalent” subject to the provisions set out in the Act. Notwithstanding the fact that Ms L did not have a statutory right to take the October 2017 Illustration, WTW made clear that it was estimated and not guaranteed.
- The Adjudicator noted that the indicative calculations from the Scheme Actuary did not support the view that Ms L would have received a higher CETV. The Adjudicator concluded that Ms L had suffered a loss of expectation rather than financial loss.
- The Adjudicator noted that the Trustee did not have a copy of the request the IFA made on 1 February 2018. The Adjudicator said that she was unable to find any corroborating evidence that the IFA contacted WTW until 28 June 2018.
- The Adjudicator said that Ms L had a reasonable expectation that her benefits would be calculated within a reasonable timescale. However, it was not until around November/December 2018, that the Company furnished WTW with the information it required to undertake those calculations. There was also a delay of approximately six months, between June 2018 and January 2019, in providing Ms L with a CETV illustration.
- The Adjudicator agreed that the Offer was in line with what I would direct for non-financial injustice in similar cases. Consequently, she did not recommend a higher award.

69. Ms L did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Ms L provided her further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and note the additional points raised by Ms L.

70. Ms L says that she is seeking a better outcome from this “fiasco.” She questions how the Company could “get off so lightly” when it made several administrative errors. HR was aware at the outset that she wanted to access her pension. The Company should have initiated the retirement process a lot sooner; it should not have taken a year for her pension to be sorted out. If she had retired a couple of months earlier, she would have been £25,000 better off.

Ombudsman’s decision

71. Ms L’s main complaint is that the eventual transfer payment was less than the transfer value displayed in the October 2017 Illustration. I note that the delays on the part of the Company and Scheme have been cited as the cause of the loss of the transfer value.

72. The Company and the newly appointed Trustee accept that the delays are sufficiently serious to justify a finding of maladministration. The question for me to consider is whether Ms L has suffered a financial loss as a consequence of the delays.
73. Under the Act, a deferred member, who is at least one year from normal pension age, has a statutory right to take a CETV. I am satisfied that the transfer value displayed in the October 2017 Illustration was not a CETV under pension legislation. Consequently, Ms L was not entitled to take it and there is no obligation on the Trustee to pay out that amount.
74. For Ms L's claim to succeed, she must demonstrate, on the balance of probabilities, that she made irreversible financial plans or commitments in reliance on the October 2017 Illustration and that it was reasonable for her to do so.
75. It was foreseeable that the October 2017 Illustration would be used for general planning purposes. However, I do not consider that it would have been reasonable for Ms L to rely on the October 2017 Illustration to enter into any financial commitment, or as the basis of a decision to retire.
76. I find that it was made sufficiently clear that the transfer value displayed in the October 2017 Illustration was estimated. It was also made clear that it would be recalculated at the time of Ms L's transfer. Consequently, her CETV could potentially be lower. Notwithstanding this, the evidence does not support the view that Ms L has suffered a financial detriment.
77. There is no evidence that the Company received the request that it was said the IFA made in February 2018. I note that had the CETV been calculated three months, either side of the request that Ms L made in June 2018, the amount available to transfer would have been lower than the CETV.
78. It is clear that this matter has caused Ms L considerable distress and disappointment and I empathise with her position. The purpose of my awards for non-financial injustice is to remedy the non-financial injustice the applicant has suffered as a direct result of the respondent(s) maladministration. The awards are not intended to be punitive. In view of the Scheme's and the Company's role in the matter, I agree that the Offer is comparable with the level of award I would direct for non-financial injustice in similar cases.
79. I partly uphold Ms L's complaint.

Directions

80. Within 28 days of the date of this Determination, £1,000 shall be paid directly to Ms L and the Company and the Trustee shall meet the cost equally.

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81. Any amount of the Offer, which has already been paid to Ms L, shall be deducted from the £1,000 sum.

Anthony Arter

Pensions Ombudsman
22 August 2022