**PENSION SCHEMES ACT 1993, PART X**

**DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

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| **Applicant** | Mr Bernard Watts |
| **Scheme** | Principal Civil Service Pension Scheme (**the Scheme**) – AVC facility |
| **Respondent(s)** | The Cabinet Office<br>The Equitable Life Assurance Society (**the Equitable Life**) |

## Subject

Mr Watts' complaint against Equitable Life and the Cabinet Office, the administrators and managers of the Scheme respectively, is that delays were caused in the transfer of his AVC funds to Legal and General causing him a financial loss.

## The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against the Cabinet Office only because their agents, Xafinity Paymaster, did not understand the correct forms needed to complete Mr Watts' open market option under the Equitable Life plan. This meant that an incorrect form was sent out to Mr Watts, as well as incorrect forms being submitted to Equitable Life on two occasions, resulting in a delay in the time taken for Legal and General to receive the monies.

## DETAILED DETERMINATION

### Material Facts

1. Mr Watts had AVCs under the Scheme held by both Standard Life and Equitable Life. The Standard Life AVC plan is not part of the dispute but Mr Watts says that despite having started the process to buy an annuity with the funds under both AVC plans in early February 2011 the Standard Life transfer completed promptly with an annuity being set up with Legal and General on 17 February 2011. However the Equitable Life transfer did not complete until 13 April 2011.

2. During the course of Mr Watts' complaint he has been provided with a few timelines and explanations for the events that occurred. The timelines however are inconsistent and differ in the details provided. What follows is a timeline of events as supported by the evidence supplied to my office.

3. Mr Watts was due to leave the relevant Civil Service employment on 31 December 2010. He completed a form (known as Form 7.1) in November 2010 requesting a retirement illustration and returned this to Xafinity Paymaster (**Paymaster**), who was at that time the administrator for the main section of the Scheme.

4. Paymaster has said that they did not directly administrator the Civil Service AVC (**CSAVC**) arrangements, unlike the benefits under the main Scheme, but acted as an intermediary in the process. They acknowledge that they did have a responsibility to facilitate the AVC process and forward on correspondence from all the parties involved.

5. Equitable Life received a letter from Paymaster on 18 November 2010 requesting the annuity illustrations.

6. On 19 November 2010 the Equitable Life sent a response direct to Paymaster (this is as their contract is with the Scheme's managers and not the member) enclosing an illustration based on a fund value of £30,049.02. The covering letter said that enclosed was a "Payment of Benefits" form which would need to be completed before payment could be made (the full name of the enclosed form is actually "The Payment of Benefits from an AVC/ Trustee Investment Arrangement", but this has often been abbreviated to simply the "Payment of Benefits" form by the Respondents). The list of enclosures on the covering letter was:

> "Maturity Value Illustration, Payment of Benefits form (45M433), FSA Factsheet, Time to Reflect Booklet (45I023), pension annuity key features (45I024), Pension Illustration".

One of the pages enclosed with the illustration has the heading "continuation sheet number 3" and asks for bank details to which the pension should be paid.

7. A retirement pack was sent to Mr Watts by Paymaster on 26 November 2010 setting out his options. The Cabinet Office, and Paymaster before them, has said that this would have included all the forms needed to complete an open market option. The enclosures listed here were:

> "Annuity Illustrations, Acceptance of CSAVCS benefit form, Payment Details form, Open Market Option form, Deferred Annuity Purchase form, Pensions and Tax leaflet"

(A fuller explanation of these forms is given under the Cabinet Office's submissions). No mention was made of the "The Payment of Benefits from an AVC/ Trustee Investment Arrangement" form being enclosed. The notes for the open market option (which was "Option 2" on the list of choices provided to Mr Watts, with "Option 1" being the purchase of an annuity with Equitable Life) said that choosing this option would require the return of the "Open Market Option" form (aka Form 7.2). Also if a lump sum was also being requested along with the open market option then the "Payment Details" form (aka Form 7.5) was also needed.

8. On 17 December 2010 Mr Watts completed a form (Form 7.3) asking for the payment of his AVC benefits to be deferred.

9. Mr Watts says that in January 2011 he appointed an IFA, Hargreaves Lansdown, to act on his behalf to help with his retirement decisions. They chose Legal and General to provide annuities for him from the AVC funds. A quotation produced at that time gave an annuity figure of £5,281.08, payable monthly in arrears and based on an investment of £96,102.75. This was guaranteed until 27 February 2011.

10. On 14 February 2011 the Equitable Life received a letter from Legal and General requesting payment of an open market option. They responded the following day, to both Legal and General and also Hargreaves Lansdown, to say that they

had no authority from the Scheme's managers or Paymaster to deal directly with them. They advised that Paymaster should be contacted instead.

11. On 17 February 2011, Paymaster received a letter from Hargreaves Lansdown (dated 15 February 2011) confirming that Mr Watts wished to purchase an annuity with his Equitable Life funds from another provider and also to take 25% of his funds as a tax-free lump sum. Also included was Form 7.2, which was signed on 8 February 2011 by Mr Watts. (Paymaster later said, during the formal complaint process, that this letter included only the "Open market option request" form, aka Form 7.2, that would have been obtained from the pack issued in November 2010 and so Mr Watts would have had all the forms that he needed).

12. Paymaster faxed a "Pension Payment Details" form (aka Form 7.5) to Hargreaves Lansdown on 18 February 2011 in response to the request to take a cash lump sum under both Mr Watts' Equitable Life and Standard Life plans.

13. On 23 February 2011 a letter from Hargreaves Lansdown enclosed a completed Form 7.5, dated 22 February 2011 by Mr Watts (the word "pension" was crossed out on this form by him and replaced with "tax free cash"). Paymaster received the letter on 28 February 2011 and sent it onto Equitable Life on 2 March, who in turn said they received it on 4 March 2011.

14. Paymaster then say they contacted Equitable Life on 7 March 2011 for an update and were told that they required an "open market option annuity" form (Form 7.2) to be completed, although no evidence of this has been provided. The Equitable Life says they have no record of contact on this date, but provide evidence of other contacts.

15. On 8 March 2011 the Equitable Life telephoned and then emailed Paymaster to say that the "Payment of Benefits" form was required in order to proceed with the AVC disinvestment, with the email having the relevant form attached.

16. Paymaster appears to have sent the "continuation sheet number 3" to Hargreaves Lansdown on 8 March 2011. Hargreaves Lansdown posted the completed form back on 14 March 2011. The form was completed by Mr Watts and under the section asking for details of where the pension should be paid is a handwritten note that says "For the payment of tax free cash only". The letter

and form was received by Paymaster on 17 March and in turn they sent them to Equitable Life the next day.

17. On 21 March 2011 Equitable Life say that they received the above letter and form – although they called it the CSAVC option form – from Paymaster but did not receive the "Payment of Benefits" form. On 22 March 2011 Equitable Life again emailed Paymaster with the "Payment of Benefits" form attached.

18. On 31 March 2011 the Equitable Life received a faxed version of the "Payment of Benefits" form. They say that as payment of the lump sum was to be made direct to the member, with the balance going to Legal and General, they were unable to accept the form in this fashion as no monies would be paid to the "trustees'" bank account with whom they have a contract.

19. Equitable Life contacted Paymaster by telephone 5 April 2011 and said that they needed a copy of the original form as faxed forms were insufficient.

20. Paymaster sent the original completed "Payment of Benefits from an AVC/ Trustee Investment Arrangement" form to Equitable Life on 8 April 2011. Equitable Life received this on 12 April. This form, under Section B, asks for a signed declaration from the "trustees" of the scheme. Said section was signed on 31 March 2011 by one of the administrators at Paymaster. There is no section for the member to complete on the form.

21. On 13 April 2011 the benefit payment was authorised by Equitable Life. A statement of payment from the Equitable Life of 14 April 2011 says that the total value of the benefits was £30,345.80 of which £7,586.45 was to be paid as a cash lump sum with the remaining £22,759.35 being paid as an open market option.

22. A policy schedule from Legal and General gave the "policy commencement date" as 10 February 2011 and also an "annuity commencement date" of 18 April 2011. The premium of £22,759.35 resulted in an annuity being set up for £102.43 a month (which equates to £1,229.16 a year), payable in arrears from the annuity commencement date and with a dependents' annuity of 50% of the annuity benefit payable on the death of the annuitant.

23. Mr Watts raised a complaint with Paymaster about the problems he had encountered with the transfer of his Equitable Life AVC. He was told at that time, by Paymaster, that Equitable Life "have more complex requirements in the forms that need to be completed in order to pay an annuity" (Paymaster also

later described these as "statutory requirements"). All the required forms were provided at the outset but the forms originally forwarded by Hargreaves Lansdown did not include everything needed in order for Equitable Life to complete their administration of the AVC. Both Mr Watts and Hargreaves Lansdown had a responsibility to ensure the correct forms were signed and returned. Until all the forms were completed correctly and returned they were unable to arrange for the annuity to be set up. They conceded that when they wrote to Equitable Life on 18 March 2011 they had failed to include a "Payment of Benefits" form. They also said that they were incorrectly instructed by Equitable Life to return this form by fax on 31 March and that this would be sufficient to allow the annuity to be set up. But they were later told by the Equitable Life that this was not acceptable thus causing a further delay.

24. The Cabinet Office also later responded to Mr Watts' complaint and a summary of the pertinent comments at that time follows. In their response and timeline they said that on 18 February 2011 Paymaster had faxed Form 7.5 to Hargreaves Lansdown to complete. And on 8 March 2011 a request to complete a "Payment details form" was sent to Hargreaves Lansdown and that Equitable Life needed this completed for the open market option to go ahead (indeed they specifically said that Equitable Life had asked Mr Watts to complete this). They further said that this form had been originally provided by Equitable Life with their illustration and was one of Equitable Life's forms, and not a Civil Service form. Their response went on to say that on 22 March 2011 the Equitable Life emailed Paymaster asking that Mr Watts complete another form – the "Payment of Benefits from an AVC/ Trustee Investment Arrangement" (they also went on to say that Mr Watts completed the form on 31 March 2011). While they understood Mr Watts' frustration with Equitable Life's process, when the process with Standard Life had gone so smoothly, they did not consider that Paymaster has caused any unreasonable delays, if any delays at all. While they appreciated that form filling was tiresome Paymaster had simply asked him to complete the forms that Equitable Life "insists members must complete". Payment was made within two months which was not considered as unreasonable.

25. In a letter of 7 June 2011 to Mr Watts, Hargreaves Lansdown said that they had reviewed their records and the additional form that Equitable Life required (which they sent to Mr Watts for completion on 11 March) was slightly different from the one that he completed and returned on 22 February 2011, but seemed to contain identical information. They questioned therefore whether it was necessary. They appeared to agree with a timeline of events provided by Paymaster as part of the complaint process but says it did not record many telephone calls that they made in an effort to expedite the process.

26. Equitable Life also provided a complaint response in December 2012. At that time they apologised for a misunderstanding in respect of sending the "Payment of benefits" form by fax. They said that at that stage they had not received direct clear instruction signed on behalf of the managers/ appointed administrator and so could not progress matters. They therefore concluded that this did not, in itself, cause any delay. Also they said that their covering letter of 19 November 2010 (which is addressed to Paymaster, not the member) states that the "Payment of Benefits" form was needed before payment could be made.

*Civil Service AVC Administration Guide*

27. The Cabinet Office has given my office a copy of the above guide (dated January 2007). Section 7 of the guide is the retirement section and covers the processes that apply at the point of a member's retirement with section 7.2 covering the situation where the member elects for an open market option.

28. This section says that a member must complete Form 7.1 to obtain from their CSAVC provider an illustration of benefits. The member must also return the "open market option" form, aka Form 7.2, should they wish to use another provider. Further if the member wishes to take part of their AVCs as a lump sum payment then Form 7.5 must also be returned to the Civil Service administrator. No mention is made of "The Payment of Benefits from an AVC/ Trustee Investment Arrangement" form or any other forms save for a "Personal Details" form which relates to main Scheme benefits, but also includes some questions about CSAVCs (the guide says that a member should have indicated on this form if they wish to draw their CSAVCs at the same time as main Scheme benefits). Said guide also includes a number of CSAVC letter templates for use by

Paymaster, including that for the retirement illustration covering letter as was sent to Mr Watts in November 2010.

*The Legal and General's comments*

29. The Legal and General Assurance Society, who is not a respondent to the complaint, have said the following to my office.

30. Their rates were adjusted (improved) on 12 February 2011 and then adjusted again on 11 March 2011, when there was a reduction of 1.1%. They corrected their earlier quote as it was done on the basis of a full fund transfer with both funds received as open market options. The original quote offered a rate of 5.5% and was guaranteed until 27 February 2011. The Standard Life fund received a rate of 5.64% and the Equitable Life fund received a rate of 5.4%. (My office does have a copy of the schedule from the Standard Life transfer and on 17 February 2011 an amount of £73,659.83 secured an income of £4,151.04 a year, i.e. at a rate of 5.635%).

31. If they had received the payment from Paymaster of £22,759.35 before they changed their rates on 11 March 2011 then it could have been combined with the transfer from the Standard Life AVC (the amount of £73,659.83) to provide an annuity of £5,433.48 a year. The current combined payment that they make to Mr Watts is £53.40 a year less than this. Also they have confirmed that they would be prepared to accept a further payment from the Civil Service in order to increase the amount of annuity payable to Mr Watts, subject to a minimum payment of £500 and a maximum payment of £5,000.

**Summary of Mr Watts' position**

32. He has suffered a loss due to the delays in settling his Equitable Life AVC funds. He had applied to take his Civil Service AVCs that he held with Equitable Life and Standard Life in early February 2011 through an open market option. The Standard Life funds resulted in an annuity being set up 17 February 2011.

33. In contrast there were considerable delays by Equitable Life and Paymaster. Neither party was clear with him or each other what the correct process was. Equitable Life requested completion of a "payment details/ open market option" form, which was wholly unnecessary as they had already received all of the relevant information on the Civil Service Form 7.5. The Equitable Life had given various reasons as to why they were not at fault, including that they had not

actually requested the form and that it was the Scheme's representatives that thought it was necessary. In turn the Cabinet Office denies this was the case. Whoever was at fault he has suffered a muddled and delayed process, as well as from a fall in Legal and General's annuity rates on 10 March 2011 (in an earlier communication with Legal and General Mr Watts was told by Legal and General that their rates changed on 10 March, but in response to my office we have been told that the rates were actually reshaped on 11 March 2011). The payment could have completed in time for him to keep the rate he had been quoted instead of suffering from a fall in rates.

34. He received an annuity of £1,229.61 a year from 18 April 2011. He should have received an annuity of £1,282.61 a year. The difference of £53.45 a year may cause him a loss over his lifetime of £1,069, using a factor of 20 as used by HM Revenue and Customs when valuing pension benefits for Lifetime Allowance purposes. In addition he should have received a further two annuity payments for March and April 2011 of £106.88. Mr Watts asks for compensation for an actual financial loss of £1,282.76 (£1,069 + £106.88 + £106.88) and compensation for the considerable stress and uncertainty he has been caused, as well as the many telephone calls he made, for which he considers £250 to be an appropriate amount. He has not accepted nor been paid any compensation to date, having rejected the offer made by the Cabinet Office previously (see the Cabinet Office's submissions).

35. When Paymaster wrote to him on 26 November 2010 this pack did include all the relevant forms. He has checked with Hargreaves Lansdown who has confirmed that when he wrote to them he had provided a completed Form 7.2. The forms 7.3 and 7.4 were not relevant here and so were not returned. He had not sent a completed 7.5 and it was not clear to him that this form was needed. Although the covering letter mentions the use of this form it does so in the context of taking a lump sum, on which no tax is payable, and yet the form asked for his tax details. In addition Paymaster already had his bank account and personal details in order to pay his main Scheme benefits (this is from another form Mr Watts had completed for claiming those benefits). Nevertheless a completed Form 7.5 was sent to Paymaster on 23 February 2011 and well before 11 March 2011 when the annuity rate dropped.

36. The Equitable Life chose to send all forms via Paymaster. Standard Life sent only one form for completion. But Equitable Life and Paymaster sent many forms that seemed to be repetitious and asking for information that ought to be sought at outset, resulting in much back and forth in communications. For example the additional form that Equitable Life required in March 2011 differed only slightly from the form he had completed the month before. Therefore he queries why this was necessary. They did not need his tax code as they were only paying him a tax-free lump sum. He adds that it was the Equitable Life who paid his lump sum (rather than Legal and General or Paymaster who are the only parties he directly gave bank details). Also Standard Life had paid him a lump sum too although he says he never gave them any of his bank details.

37. Equitable Life and Paymaster surely dealt with hundreds of AVC retirements and are used to the process, which should be routine to them. Paymaster therefore should have known the relevant requirements. But Paymaster could not explain why Equitable Life kept sending the wrong forms and asking for duplicate data. They did not seem to appreciate until very late on that it was their responsibility, and not his, to complete and return the "Payment of Benefits from an AVC/ Trustee Investment Arrangement" form (form 45M433). This was not sent back until 8 April 2011 but it should have been sent back two months earlier. There was no guidance given at any time to use the November 2010 forms.

**Summary of the Cabinet Office's position**

38. Paymaster no longer acts as an administrator for the Scheme and so the Cabinet Office is the respondent as the Scheme's manager and would also pay any compensation due. Also they are no longer able to ask Paymaster for their input.

39. Paymaster was a Pension Service Centre dealing with pension administration for Scheme members. However unlike with the main Scheme's benefits, administrators are not directly responsible for bringing CSAVC benefits into payment. And the CSAVC providers do not deal directly with Scheme members. Paymaster acted as an intermediary in the process but they did not directly administer the AVC account. They did have a responsibility to facilitate the process and forward on correspondence from the parties involved, effectively acting as a "post box". There is no standard period between an application and the payment of CSAVC benefits.

40. When a member requests a retirement illustration from the administrator, who in turn sends this to the AVC provider, the provider will send said illustrations back to the member, again via the administrator. The administrator also includes the following forms:

- Form 7.2. – Open Market Option Request
- Form 7.3 – Deferred lump sum and annuity purchase – the member decides not to take CSAVCS benefits yet
- Form 7.4 – Acceptance of CSAVC benefit – the member accepts the illustration their CSAVCS provider has given
- Form 7.5 – Pension Payment Details – this includes the member's personal details, including bank details and tax district/ reference details

If the member chooses an open market option they must obtain their own illustrations and the administrator then arranges for the CSAVC provider to pay funds to the member's chosen provider. The administrator completes a "Member Retirement Form" and sends it to the provider. Members must complete Form 7.5 in all cases except deferment.

41. As members approach retirement they are also required to complete a "Personal Details Form" to claim their main scheme benefits. This requires information such as bank details. This is a separate requirement from the CSAVC forms above, although some of the information required is similar or the same.

42. The papers that they received on 17 February 2011 should have included all the forms required by Equitable Life. However only one of the forms requested was provided. All of the necessary forms would have been provided within the pack that was sent out to Mr Watts on 26 November 2010.

43. The forms forwarded from Hargreaves Lansdown did not include everything required to complete the administration of the AVC. The particular form that was missing was the "open market annuity option" form, which required Mr Watts' signature. This was not received by Paymaster until 17 March 2011, then sent to Equitable Life the following day. (In actual fact the form that was missing from Mr Watts' response was Form 7.5, aka the "Pension Payment Details" form. Moreover this was not returned on 17 March 2011 but had been returned on 23 February with Paymaster receiving it on 28 February).

44. The Cabinet Office agree that Equitable Life did not need a copy of Form 7.2 and are unable to explain why Paymaster sent a copy of Form 7.2 onto them. However the Pension Payment details form (Form 7.5) was needed by the Equitable Life in order to pay the member's lump sum. Therefore Paymaster did need to send this form onto them.

45. The date that the Standard Life AVC was paid cannot be compared with this transfer as the earliest date that Equitable Life was in receipt of the correct forms allowing them to proceed with setting up an annuity was 21 March 2011. Given their standard turnaround times the earliest that it would have been set up was 4 April 2011.

46. When they asked Equitable Life if they would accept a faxed copy of papers they did so in an attempt to expedite the process for Mr Watts. They faxed a copy of the relevant form on their instructions in good faith.

47. They did not deal with CSAVCs on a daily basis. In 2011 they only dealt with 81 CSAVC transactions, of which only a small proportion were open market options.

48. Whilst they apologise for a small delay in the process caused by the "Payment of Benefits" form they do not consider it appropriate to uphold the full request for compensation on this basis. While they had a duty of care as intermediaries to take appropriate and timely action to ensure that a transfer completes successfully; Mr Watts and Hargreaves Lansdown also had a responsibility to ensure that the correct forms are signed and returned. It seems that Paymaster and Equitable Life were jointly responsible for the delays, but they should only have to pay compensation for Paymaster's part of this. They consider that an amount of £80 is appropriate. This is worked out as one-half of one month's annuity payment of £102.43 (£51.21) and one-half of simple interest on the lump sum of £7,586.45 (£1.40) and £25 for distress and inconvenience caused, and then rounded up to £80 for simplicity. Aside from this, their view is that Mr Watts' complaint remains with Equitable Life.

49. My office wrote to the Cabinet Office to ask them for any evidence that Equitable Life had asked Mr Watts to complete the "Payment of Benefits from an AVC/ Trustee Investment Arrangement" form. A question was also asked as to whether they now agreed that this was in fact the only form that Equitable Life

needed (while also sharing with them the response from Equitable Life) with there being no need for Form 7.5 to be sent to them. In response the Cabinet Office said they had no further comments to make.

**Summary of Equitable Life's position**

50. The contract here was with the Scheme's managers and not the individual members. They would only pay out on an AVC fund on the instruction of the Scheme managers or appointed administrators when they had received all the information necessary to terminate the fund correctly.

51. The initial request that they received was from Legal and General and not the appointed administrators. They therefore needed to write back and explain that they could not deal with either Legal and General or Hargreaves Lansdown directly.

52. They requested their "Payment of benefits" form to be completed as this had all the information necessary to pay out the member's record correctly. Their letter of 19 November 2010 made clear that they required this form before payment could be made. The form was emailed to Paymaster on 8 March 2011 and again on 22 March, both times following a telephone call to Paymaster, and was eventually received on 5 April. As they did not previously have this form they had not received all the information from the appointed administrators. It was a requirement that their own form was completed as in signing that form the Scheme's managers, who are the legal owners of the policy, confirm the election of the payment and accept that instructions given are irrevocable, thereby discharging Equitable Life's liabilities. The Civil Service Form 7.5 is signed by the member and not the Scheme manager.

53. They were now aware that Hargreaves Lansdown posted Forms 7.2 and 7.5 to Paymaster on 15 and 23 February 2011 – but those forms are the Civil Service administrator's own forms and are not used by them. Any other forms that have been referred to are not Equitable Life forms. The only form that was required by them to make payment in this case, as Mr Watt's elected not to purchase an annuity with them, was the "Payment of Benefits from an AVC/ Trustee Investment Arrangement" form – and this form needed to be completed by Paymaster, not the member. They could not find any evidence on their systems of any such requests being made to Paymaster, but as their procedures would

not have required the completion of any other forms they would not have made a request for any other forms. They only had records of contact from Hargreaves Lansdown and Legal and General in early March 2011. In their view this form could have been returned to them much sooner.

54. They request the original "Payment of benefits" form when paying monies direct to the member and a third party, in respect of the option market option, as the monies are not being forwarded to the Scheme manager's bank account – the party that they have a contract with. The form was included in the November 2010 pack.

55. They did not require the completion of the "Equitable Life Payment Details" form (sometimes referred to in the correspondence as the "Payment/ Open Market Option", even though it is not used where an open market option has been selected, and actually appears to be the sheet headed "continuation sheet number 3") as they had already been advised that the member was intending to take an annuity with Legal and General. This form would only have been requested where a member had indicated an intention to take an annuity with Equitable Life. Although the form is not on the list of enclosures in the November 2010 letter it would have been included as it formed part of the maturity illustration. The inclusion of this form in November 2010 was wholly acceptable on the basis that the Scheme manager had yet to advise the basis on which Mr Watts was to take his benefits at that time.

56. After writing to Legal and General on 15 February 2011 they did not hear directly from Paymaster until they received a letter from them on 4 March 2011. In that letter they did not take account of the society's requirements as specified in the retirement pack of November 2010. Instead they gave their own form 7.5. To avoid delay they called Paymaster on 8 March 2011 and made them aware that their own "Payment of Benefits" form was needed and, as they seemed to be unable to locate the form previously sent, they emailed a copy on the same day.

57. Nothing further was received until 21 March 2011 when they were sent a page from a form from the November 2010 pack (this is the page headed "continuation sheet number 3") despite having sent the correct form to Paymaster on 8 March. This was an irrelevant form and was only needed if an

annuity was to be purchased with the Equitable Life, which all the parties knew was not the case. They again emailed the correct form on 22 March.

58. They now say that they cannot find any evidence to suggest that they told Paymaster that the "Payment of Benefits" form could be returned and accepted by fax. Even if it were accepted to be the case any delay was minimal and well after Legal and General's annuity rates changed. And there was no evidence that they asked for any open market option forms. It was only at this point that they were aware that none of the fund would be paid via the Scheme's managers/administrators. In these circumstances they needed an original copy of the form and advised Paymaster of this on 5 April. They did not receive an original copy of the correct form until 12 April 2011 with payment being made the next day.

59. They had made their requirements clear from the outset and made every effort to ensure that they had the correct paperwork. If Paymaster had been unclear about the process at any point they could have contacted them accordingly. They feel they are unable to comment on whether Paymaster should have been familiar with the use of the "Payment of Benefits" form (as questioned by both Mr Watts and my office). They are also unable to confirm exactly how long this form has been in use for, but can find evidence of it being used since at least September 2006 and confirm that it is used for all AVC disinvestments.

**Conclusions**

60. Mr Watts is measuring the time taken to process his Equitable Life CSAVC application against that of his Standard Life CSAVC. Strictly the time taken by Standard Life to process their AVC open market option is not the yardstick by which to judge the time taken by the Equitable Life and Paymaster. There is no standard or set timeframe for completing an open market transfer between pension providers. The length of time a transfer should take depends on a number of factors, such as the provider's own turnaround times, the industry guidelines for such transactions and any particular circumstances of the individual case.

61. In my judgment having looked at the sequence of events; there were three main issues that caused the process to take as long as it did. One was the sending of an incorrect form to Mr Watts. The second was the provision of two forms to

Equitable Life that they did not need. Both of these appear to be as a result of Paymaster's misunderstanding of the process needed. The third is the time taken to return Form 7.5 by Mr Watts.

62. It is informative that, despite all the earlier claims to the contrary by the Civil Service representatives, the Equitable Life only actually required the completion of one form (the "Payment of Benefits from an AVC/ Trustee Investment Arrangement" form). And that form was not to be completed by Mr Watts but by Paymaster (indeed this is likely why the standard wording in Paymaster's retirement illustration covering letters does not include the "Payment of Benefits" form in the "list of enclosures" – it is not a form that members need to complete).

63. My office, and Mr Watts prior to the application, has been told that Equitable Life needed him to complete and return additional forms. The first form Paymaster sent him after being contacted by Hargreaves Lansdown was Form 7.5, aka the "Payment Details" form. This was originally sent to Mr Watts as part of Paymaster's pack. The covering letter made clear that Mr Watts needed to return this form if he was taking a tax-free lump sum in addition to an open market option. So I consider the failure to return this form until 23 February 2011 initially rests with Mr Watts. But Paymaster then went on to send this form onto Equitable Life, even though it was not required by them, causing an initial delay (most likely they confused the "Payment Details" form with the "Payment of Benefits" form required by Equitable Life). While they and the Cabinet Office have said that Equitable Life required sight of Form 7.5 there is no evidence to support this claim, nor does their own guidance refer to the need to send this onto the CSAVC provider.

64. I note that Mr Watts says that the guidance he was given was unclear. He says that the guidance under Option 2 only required this form in the context of taking a lump sum but that references in places on Form 7.5 to just "pension" made its role confusing. Further that there would be no need for his tax code when only a tax-free amount was payable and also that the form asked for details that Paymaster already had.

65. In my view the fact that Mr Watts was asked, at the outset, to complete the form if he wanted a lump sum payment should have been reason enough for him to complete it. The form was also multi-purpose and asked for the bank account details into which *both* a pension and lump sum would be payable. The letter of 26 November 2010 said that this form was also to be used if the member decided to stick with the same CSAVC provider when purchasing an annuity (i.e. if they chose Option 1 instead of Option 2, which was the open market option). So it was designed to cover more than one of the options a member might choose. And while Mr Watts gave details of where his main Scheme benefits were to be paid on the "Personal Details" form, it was not necessarily the case that a member would want their CSAVC amounts paid to the same account. Also the AVC guide that Paymaster needed to adhere to also required them to obtain this form. So I consider that they had no choice but to request this form (the information required here only appears to become repetitious once you look at the two forms completed *after* the provision of the completed Form 7.5. But one of those was for Paymaster and the other was not needed at all).

66. Having received the above form on 4 March 2011 the Equitable Life contacted Paymaster on 8 March 2011 and asked for the completion of the "Payment of Benefits" form (there is no evidence of contact on 7 March or a request for Form 7.2 from them). Paymaster said that the Equitable Life asked that Mr Watts complete this form (and the Cabinet Office maintains that they needed sight of Form 7.5).

67. But Equitable Life did not require forms from Mr Watts. The letter of 19 November 2010 was addressed to Paymaster and asked them for the return of the "Payment of Benefits" form (which incidentally is why there was no guidance given in this pack to Mr Watts on what forms to use – the only guidance he was given came in the subsequent letter from Paymaster to him). Their telephone note of 8 March 2011 makes no mention of Mr Watts needing to complete the form. Also the email of the same date makes no mention of Mr Watts' involvement being needed. And the form itself asks only for a declaration from the "trustees" (which would actually be either the Scheme managers or administrators in the case of this scheme, as it has no trustees) with no declaration section for the member. It should have been clear to Paymaster that Mr Watts did not need to complete it. To compound the problem they then sent

out the “continuation sheet number 3” to Mr Watts on 8 March 2011 (again no doubt as a result of confusion over form names and I note that the parties have on occasion referred to this as the “Equitable Life Payment Details” form).

68. This resulted in the “Payment of Benefits” form being requested again on 22 March. Paymaster and the Cabinet Office say that they were told it was acceptable to fax the form back, which they did on 31 March. However they have been unable to provide any evidence of Equitable Life informing them that a faxed return would be acceptable. And the telephone notes and emails provided by the Equitable Life make no mention of faxing a response. So I can only conclude that no such request was made. So the faxed response from Paymaster caused a further delay (although they did realise on 31 March that they needed to complete the form as it was signed by one of their administrators).

69. In relation to the question of duplicate information being provided I suspect that one of the reasons that Form 7.5 is asked for by the Civil Service is so that the payment details given on this form by the member can be copied onto the “Payment of Benefits” form that is used by Equitable Life. After all they have no direct contact with the member and so have no other way of obtaining these details from the member. Paymaster would hold details of where Mr Watts’ main Scheme benefits were being paid but he may not have wanted his CSAVC proceeds to be paid to the same account.

70. I am minded to uphold the complaint against the Cabinet Office for the reasons given above. Whether the Cabinet Office decides to seek any redress from their former agents Paymaster is a matter for them.

71. In relation to the complaint against Equitable Life I have seen no evidence of them misinforming Mr Watts at any stage or providing either party with incorrect instructions (and indeed they never communicated directly with Mr Watts). There is no evidence that they delayed matters at any stage either, with the copies of communications they provided all showing swift responses on any occasion when they were contacted. So I do not uphold a complaint against them.

*Redress*

72. There is then the matter of identifying the redress that should be paid to Mr Watts. The situation is not as simple as he presents it when making his claim and is muddied by the delay in him returning Form 7.5 and also the change in his fund value.

73. Paymaster received the completed Form 7.5 on 28 February 2011 and it was received by Equitable Life on 4 March 2011 (a Friday). I consider that the “Payment of Benefit” form could and should have been received by Equitable Life on that same date. In turn, following the same timescales as those that actually took place, the monies could have been disinvested on 7 March 2011 – prior to the reduction in Legal and General’s annuity rates.

74. This means that I do not consider that Mr Watts is entitled to two months’ worth of back payments. There is also the added complication that during the period of delay Mr Watts’ fund increased to £30,345.80 (on 13 April 2011) from the value originally given of £30,049.02 (on 19 November 2010), a period of about five months. Due to the small difference in the amounts involved and the time that Mr Watts’ complaint has been going on I have decided to take the pragmatic approach that the settlement value would have been £30,237 on 7 March 2011, based on a linear increase in value. This in turn means that the annuity rate that he could have secured would have been £1,277.89 a year (based on the rate of 5.635%). It also means that the lump sum he received was overpaid by £27.20 (£7,586.45 – £7,559.25).

75. In relation to the back payments of annuity Mr Watts says that he should receive two months’ worth of back payments. Mrs Watts ended up with an annuity of £1,229.16 a year but should have received an annual amount of £1,277.89. His claim for back payments is based on two months’ annuity at the amount he feels he should have got of £1,282.61 a year, which is £106.88 a month. But in my view it should be based on the slightly lower amount. However I also found that the transfer would have completed around 7-10 March 2011 and so there is not quite a two month delay as was claimed. The annuity is paid in twelve equal instalments monthly in arrears, regardless of how many days are in the month, and would be about £106.49 a month. But the period from 10 March 2011 to 18 April 2011, when his annuity actually started, is about one month and one week. I

again take the pragmatic view that he should be compensated for this period less the excess lump sum he was paid – a payment of £105.91 (£106.49 x 1.25 less £27.20).

76. There will also be back payments due for the difference in annuity he actually received and that he should have received up to the date that his on-going annuity is amended. This is an annual difference of £48.73 a year (£4.06 a month). And all back payments due should be adjusted for interest due to late payment.

77. Legal and General has confirmed that they can amend the on-going annuity. Mr Watts' annuity, in respect of the Equitable Life transfer, should be amended to £1,277.89 a year. The cost of doing so should exceed £500 but not £5,000.

78. Finally I am making an award for the distress and inconvenience caused to Mr Watts. His complaint started in early 2011 and so has taken over three years to be brought to a conclusion. This is in large part due to the inconsistent, and on occasion outright incorrect, responses he has received from the representatives of the Civil Service Scheme. Indeed even very recently my office is still being told by the Cabinet Office that Mr Watts was required to complete forms by Equitable Life and that the Equitable Life also needed to be sent Form 7.5 (although they are possibly hamstrung by the fact that they could no longer refer back to Paymaster). But no evidence has ever been provided to support the claims they made and they have proven to be incorrect. And earlier dispute responses, in particular the timeline of events they provided, were simply not accurate.

**Directions**

79. Within 21 days of this determination the Cabinet Office are to arrange for Legal and General to be contacted in order to amend the on-going annuity that Mr Watts receives from them to £1,277.89 a year and establish the costs for doing this.

80. Within 21 days of receiving that information from the Legal and General the Cabinet Office are to make the relevant payment to them and any associated fees (if any) for setting up an additional annuity amount.

81. Within 21 days of receiving confirmation that his on-going annuity with the Legal and General has been amended, the Cabinet Office will calculate all the arrears due to Mr Watts up to the date of the amendment, noting that he would have

been due a total payment of £105.91 for the period between 10 March and 18 April 2011 and then an increased annuity of £4.06 a month thereafter to the date that his annuity is revised. Simple interest is to be applied at the base rate for the relevant time quoted by the reference banks from the date when the payments fell due to the date of actual payment.

82. Within 21 days of this determination the Trustees are also to pay Mr Watts £350 to redress the distress and inconvenience he has suffered in having to pursue the matter over such a long period.

**Jane Irvine**
Deputy Pensions Ombudsman

10 September 2014