Ombudsman's Determination

Applicant	Miss Christine Gibson
Scheme	Credit Suisse Group (UK) Pension Fund (**the Fund**)
Respondents	Credit Suisse First Boston Trustees Ltd (**the Trustees)** Fidelity Life Insurance Limited (**Fidelity**)

Complaint summary

Miss Gibson complains that the Trustees and Fidelity failed to adequately inform her of the actions which she had to take within prescribed timescales in order to transfer the benefits available to her from the Fund to a new pension arrangement before they were lost.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the Trustees and Fidelity because I consider that the Fund literature which Miss Gibson received did set out clearly what she had to do in order to transfer her benefits.

DETAILED DETERMINATION

Background

1. In accordance with current statutory requirements, since 6 April 2006, members of occupational pension schemes with between three months and two years' pensionable service are entitled to take either a cash transfer value of their pension rights or a refund of their own contributions (if applicable less tax).

2. The Pensions Regulator (**the Regulator**), as required by the Pensions Act 2004, has issued "Code of Practice No 4: Early Leavers Reasonable Periods" (**the Code**) which covers the periods during which early leavers should be notified of their pension rights.

3. The Code states that the administrator of an occupational pension scheme, on behalf of the trustees, should provide the affected members with written notice of:

   - their rights under the legislation;
   - the amount of the cash transfer sum or refund; and
   - how to exercise their rights

   This should be done as soon as reasonably possible after the member leaves pensionable service. The Regulator expects this normally to be within three months of the member leaving pensionable service (although the time period is not set out specifically in the legislation).

4. The member should then be given a reasonable period to reply which the Regulator normally expects to be at least three months. The deadline should be confirmed in the options letter issued by the scheme administrator and is designed to enable the member to obtain financial advice before responding. The member is able to request further information or ask for an extension to the deadline but the Code states that the trustees are not obliged to grant an extension.

5. Once the reply date has passed, the member may be provided with a refund under the default procedure. There is no requirement to chase members for a response before the three month period has expired but the Regulator would expect the

trustees to allow a period of one month after the reply date before issuing the refund to the member.

Material Facts

6. When Miss Gibson joined Credit Suisse (UK) on 9 August 2010 she became a member of the Fund.

7. Miss Gibson suffered a period of serious ill health during mid-2012 and had to take several weeks of sick leave. She decided to leave Credit Suisse (UK) in order to fully recuperate and travel. Her last day at Credit Suisse (UK) was on 22 June 2012. Under the terms of a Compromise Agreement (see below) her membership of the Fund was treated as ending on 12 July, giving her 23 months and 2 weeks' pensionable service.

8. Miss Gibson did not have to pay any contributions into the Fund. Credit Suisse (UK) paid monthly employer's contributions into it on her behalf. She could, however, choose to redirect part of each contribution to provide for other employee benefits or cash. She took advantage of this option after one month's membership in the Fund.

9. A Compromise Agreement made on 30 July 2012 between Miss Gibson and Credit Suisse (UK) dealt with her pension rights in the Fund as follows:

> "Where applicable benefits provided to you under membership of the Company pension scheme will cease on the Termination Date. Adjustments will, however, be made to ensure that your accrued pension rights reflect the date your employment would have terminated if full contractual notice had been worked. You will receive a statement of benefit from the pension fund administrator in relation to your accrued pension rights and any questions relating to pension scheme membership should be addressed to the pension fund administrators, Fidelity International…"

10. As part of the leaving procedure Miss Gibson met with her line manager and a Human Resources representative. She says that during the meeting:

    - she notified them that she intended to travel for many months before making a decision on her career;

- she gave them her parent’s home address in South Africa when asked to provide an address which they could use to contact her whilst travelling; and
- she was not informed that she had to make a decision soon on her pension rights in the Fund or face losing them

11. In May 2013 Miss Gibson’s mother apparently handed over to Miss Gibson all the post which she received whilst she had been travelling. She discovered that Fidelity had sent her letters dated 17 August and 29 November 2012.

12. In the August letter, Fidelity informed Miss Gibson that as she had been a member of the Fund for less than two years, the only option available to her was a transfer of her pension rights to another suitable pension arrangement (in accordance with the rules of the Fund). It also said that:

    - she had three months from the date of the letter to confirm that she intended to transfer her benefits; and
    - she should take immediate action or she would lose the entire value of her pension rights in the Fund

    Fidelity enclosed a transfer quotation with the letter showing that the current amount available to Miss Gibson for transfer was £18,245 (all employer contributions).

13. On 2 October, Fidelity sent Miss Gibson a letter reminding her that she only had three months from 17 August to make her decision and if she did not reply by the deadline date, the Fund’s default option would be applied. Miss Gibson says that she did not receive this letter.

14. In their November letter, Fidelity informed Miss Gibson that:

    - the decision period had now expired; and
    - as she had neither confirmed to them that she wished to transfer nor paid any voluntary contributions into the Fund, she was no longer entitled to any benefits from the Fund

15. Ms Gibson explained to Fidelity the circumstances behind her failure to contact them before the deadline date passed. She asked Fidelity to give her another chance to transfer in June 2013 but they declined her request.

Summary of Miss Gibson's position

16. If the Respondents had adequately brought to her attention that she had to confirm to Fidelity within three months from the date of their first options letter, 17 August 2012, of her wish to transfer her pension rights, she would have asked her mother to open the letters from Fidelity and inform her of their contents. She could then have contacted Fidelity to make the necessary transfer arrangements whilst she was still travelling. The statutory transfer requirements were not shown in:

- her letter of employment;
- the rules of the Fund which she received on joined Credit Suisse (UK);
- the Fund booklet provided to her during her employment;
- her compromise agreement.

17. Miss Gibson says that:

> "I feel all the benefit of my hard work at Credit Suisse (UK) has been taken away from me and should I have stayed on for a further one month, I would not have to go through the distressing experience of fighting for access to funds which I built up during my employment with Credit Suisse (UK). These are funds that were contributed into my pension fund in accordance with my benefits package and I submit that I have suffered a grave personal injustice and I have been hit with a huge financial loss prejudice due to the arbitrary approach Fidelity has taken in withholding the funds."

18. It is grossly unfair for the Respondents to now refuse her the opportunity to transfer her pension benefits from the Fund to another suitable provider when the minor oversights on her part and that of her mother are wholly understandable in light of her personal circumstances at the time when they occurred.

19. The Respondents' decision not to give her another chance to transfer her pension rights in June 2013 after the deadline date has passed is "contrary to the spirit of what pension savings represents."

Summary of the Trustees' position

20. According to the Trust Deed and Rules of the Fund (**the Rules**), Miss Gibson was only entitled to a refund of her own contributions into the Fund because she did not complete two years' pensionable service before leaving Credit Suisse (UK).

21. In order to comply with overriding legislation, the Fund has provided a facility (since 6 April 2006) to give Miss Gibson an opportunity to transfer her accrued benefits to another pension scheme within permitted timescales.

22. If Miss Gibson missed the deadline, they could, at their discretion, allow her additional time to complete the transfer if she could demonstrate that she had taken reasonable steps to initiate the process.

23. They acted at all times (via Fidelity) in accordance with their policy for leavers who have between three months and two years of service in the Fund (**the Policy**) (of which pertinent paragraphs are reproduced in the Appendix to this document). The Policy is compliant with both the statutory requirements and the Code. They have to be consistent in their application of the Policy so that fairness is maintained.

24. As Miss Gibson joined the Fund in August 2010, she should have received the November 2009 edition of the Fund booklet. A revised version was published in September 2010. Both booklets clearly describe the Policy (the relevant paragraph in the November 2009 Fund booklet is reproduced in the Appendix).

25. Furthermore, page four of the Trustee Update (**the Update**) which they sent Miss Gibson in May 2012 explains clearly the steps which she had to follow in order to transfer her benefits and also the consequences of failing to do so.

26. In particular, the Update said that:

> "Your short service leaver letter will be issued to the latest address held by Fidelity. Therefore you must keep them up to date with any changes to your contact information, particularly if you intend to travel after leaving the bank."

27. Miss Gibson is on a list containing the names and addresses of all the members to whom they sent the Update in May 2012.

28. Electronic copies of the booklets and Update are also available on Fidelity's website and the intranet of Credit Suisse (UK).

29. By examining the November 2009/September 2010 editions of the Fund booklet and/or the Update, Miss Gibson ought reasonably have learnt about the Policy and made different arrangements for her post whilst travelling.

30. They sent their letters (via Fidelity) to Miss Gibson using the address which she gave them. She did not tell them that she would be unable to deal with any post received at this address whilst travelling. They must be able to rely on Miss Gibson to providing them with an address for the purposes of corresponding with her.

31. It would be highly unlikely for Miss Gibson's letter of employment or her compromise agreement to contain details of early leaver vesting rules since these provisions are governed by the Rules and are not usually contractual matters.

Conclusions

32. One of the main duties of the Trustees is to act in accordance with the Rules and within the framework of the law. The operation of overriding pension law created by Parliament means that the new measures must be applied even if the Rules make no equivalent measure.

33. The Pensions Regulator has statutory objectives to protect the benefits of members of work-based pension schemes. It is required to publish codes of practice giving guidance on implementing certain parts of the legislation and indicating the expected conduct. Although the codes are not "law", they are material to my decision as to whether the Trustees have acted properly.

34. In my view, it was consequently totally acceptable for the Trustees to have used the Policy (which they devised to be compliant with both the statutory requirements and the Code) to determine the benefits available to Miss Gibson on her leaving the Fund.

35. It is clear from the evidence that the Trustees (via Fidelity) adhered to the prescribed timescales in the Code (and the Policy) to notify Miss Gibson of her pension rights in the Fund on leaving service and also to send her the subsequent chaser letter. When Miss Gibson did not respond within three months of their letter

of 17 August, the Trustees (via Fidelity) informed her on 29 November that they had to apply the default procedure and as she had not paid any voluntary contributions, she was not entitled to any benefits from the Fund.

36. Miss Gibson says that the Respondents failed to adequately inform her of what she had to do within prescribed timescales in order to transfer the benefits available to her from the Fund before they were lost. She says that the Fund literature which she received when she joined Credit Suisse (UK) in August 2010 did not mention the Policy. But the Fund booklet in force at that time was the November 2009 version, which did, and I consider it most unlikely that she would have been provided with an obsolete earlier edition. Further, the Trustees reminded her of the Policy when they sent her the Update in May 2012 which set out clearly what she had to do in order to transfer her benefits before losing them.

37. I therefore find that Miss Gibson had sufficient material to know what the Policy was. I also find that they took reasonable steps to follow the Policy and it is not through any failure of theirs that Miss Gibbs' potential transfer value is lost to her.

38. Miss Gibson's view is that their decision to adhere to the Policy is a contrary to the aim of encouraging pension saving. I do not need to express an opinion on that because even if I personally agreed wholeheartedly it would not make their decision to adhere to the Policy so unreasonable as to be perverse, which is the only basis on which I could overturn it.

39. I do not uphold Miss Gibson's complaint.

Tony King

Pensions Ombudsman

30 December 2014

APPENDIX

Trustees' Policy on Leavers with less than two years of Service

"On leaving pensionable service, the member will receive an initial option letter giving a period of three months to respond.

The member must respond to the administrator verbally or in writing within three months to begin the process of enabling the payment of a transfer value…

The communications will make it clear to the member that if no response is received within the timescales outlined then there will be no further communications and the option to request a transfer will expire at the end of the third month. In practice, the administrator will send a chaser letter to the member if no response has been received within the first six weeks of the three month option period. No further communications will be sent after this chaser if no response is received…

If there is no response from the member by the end of the third month…unless the member has paid AVCs during service, there will be no member refund. The value of the member's retirement account will be disinvested and transferred to the Trustee surplus account.

In practice Fidelity will operate an additional one month grace period at the end of the initial three month option period for members to initiate the transfer process. Should the member contact the administrator within one month of the disinvestment of their fund to request a transfer, the administrator will provide the necessary documentation for the member to begin the process of enabling the payment of a transfer value…

The Trustee will, however, have discretion to allow members an extended period in which to complete their transfer, where the member can demonstrate that they have taken reasonable steps to initiate the transfer process…Trustee discretion can be applied at any stage of the short service leaver process."

Credit Suisse Group (UK) Pension Fund: Trustee Update to Members May 2012

"Transfer it or lose it" a message from the Administration Committee

One area that comes up again and again is Short Service Leavers (SSLs) who do not reply to their transfer option letter and subsequently dispute the loss of all their pension benefits…

Short Service Leavers (SSL) – Q&A

What happens to my pension benefits if I leave the Bank?

If you leave the Bank after completing between three months and two years of membership in the Fund, you will be considered a Short Service Leaver.

As a Short Service Leaver what actions must I take?

You <u>must</u> transfer out your funds to another pension provider – if you don't you will lose them.

Fidelity will write to you on leaving and you <u>must</u> confirm to Fidelity that you want to take a transfer within <u>three months</u> of this letter being issued. If you do not do this, you <u>will</u> lose your Fund benefits.

When Fidelity receives your confirmation they will provide you with the necessary transfer out paperwork; you then have a further three months to make the transfer. You <u>must</u> complete the transfer in three months or you will lose your Fund benefits.

Is there anything else I need to do?

Yes – your SSL letter will be issued to the latest address held by Fidelity. Therefore you <u>must</u> keep them up-to-date with any changes to your contact information, particularly if you intend to travel after leaving the Bank. This remains <u>your responsibility</u> and not the Bank's. If your SSL letter is sent to an old address you may miss the opportunity to transfer your benefits."

Credit Suisse Group (UK) Pension Fund - Members' Guide to DC Plus (November 2009 edition)

"Leaving service options
If you have more than three months' but less than two years' qualifying service
You must transfer your retirement account to another suitable pension plan to keep the benefit.
You do not have the option to leave your retirement account in the Fund.
If you wish to do this, you must do so within three months of being contacted by the pension administrators. If you do not do so within this timescale, then the value of the retirement account will return to the general assets of the Fund and will no longer be available to provide benefits for you or your dependents."