

Ombudsman's Determination

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| Applicant | Mr Neil Morris |
| Scheme | TUI Travel Plc Pension Scheme (the Scheme) |
| Respondent(s) | Capita The Trustees of the Scheme (the Trustees) |

Complaint summary

Mr Morris' complaint against the Trustees and Capita is about the winding up of the pension scheme and the financial loss caused by the poor administration of his request to transfer.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the Respondents because the winding-up of the Scheme was handled appropriately and Mr Morris' transfer was not subject to delays as a result of any maladministration.

DETAILED DETERMINATION

Material Facts

1. In April 2013 an announcement from the Trustees said that the Scheme would commence winding up with effect from 31 March 2013.
2. In mid-July 2013 a mailing from the Trustees was sent to members. The mailing to Mr Morris said that he was a deferred member of the Scheme. Benefits could be secured by either a transfer to another pension arrangement, putting the benefits into immediate payment where certain criteria were met by the member or securing the benefits through a Trustee Section 32 Buyout Plan. Members needed to make a choice and the deadline for responding was 30 September 2013. The default option if no response was received was the Buyout Plan, with benefits to be secured with Standard Life. For those selecting a transfer to an alternative arrangement the details of the arrangement and written consent for the transfer was required.

Relevant FAQs were:

“I am considering Option 2, what are the requirements for an alternative arrangement?”

...you may elect a transfer on an individual arrangement or to another occupational pension scheme...The alternative arrangement must meet the requirements of the HMRC and the Pensions Regulator and your provider will be asked to confirm this...

How will my funds be invested if I elect Option 2?

If you are transferring to an alternative arrangement we will contact your new scheme shortly after receiving your Option form to begin the transfer process. This can take a number of months to complete, depending on the requirements of your new scheme...”

3. Notes provided by Mr Morris say that his advisers processed the forms on 21 August 2013 and passed them to Mr Morris for signing. They further record that on 29 August the advisers received a change of agency (letter of authority) from him but that the Scheme forms were not returned. They received those forms from Mr

Morris on 4 September and wrote to Capita on the same date with the letter of authority only.

4. Mr Morris says he completed and returned option forms to Capita on 13 September 2013. He chose the option for a transfer to an alternative arrangement (which corresponded to "Option 2" on the form) asking for a transfer to the SIPP Centre.
5. Also on 13 September 2013, a letter from the SIPP Centre to Capita said that they enclosed "your transfer discharge paperwork" and their own "transfer form" which had been signed and completed by Mr Morris. The papers enclosed were the completed winding-up option form (as completed by Mr Morris) and a SIPP Centre transfer form.
6. Capita say they received the form from Mr Morris on 17 September 2013. Mr Morris has provided a Royal Mail dispatch log recording letters being sent to both the SIPP Centre and Capita on 12 September. He says that since the SIPP Centre received their letter on 13 September then it was reasonable to assume that Capita also received the item addressed to them on 13 September and not 17 September as they have claimed. (We have tried Royal Mail's track and trace service but no delivery date is shown saying that this information is "not yet available".)
7. Capita then wrote to Mr Morris on 26 September and thanked him for returning his option form. They said they had forwarded transfer details to the SIPP Centre and that the current transfer value was £1,222,595.11, which was not guaranteed. They referred also to a government initiative in February 2013 to tackle pension liberation, and enclosed a factsheet on the subject. They said that to proceed with the transfer they required the completion of the discharge forms which had been sent to the SIPP Centre, who should contact him accordingly.
8. As Capita had said, a transfer pack was sent to the SIPP Centre on 26 September which included documents for both the SIPP Centre and Mr Morris to sign.
9. The SIPP Centre say that they received the transfer pack on 1 October 2013.
10. Capita say they received Mr Morris' completed discharge form by email on 3 October 2013. (Mr Morris says he sent it back on 2 October, but nothing turns on that.)

11. Capita received the transfer discharge forms from the SIPP Centre on 7 October 2013 by email. They raised a disinvestment instruction the next day.
12. The disinvestment was completed on 9 October 2013, with the Scheme receiving the funds the next day. The funds were transferred to the SIPP Centre on 11 October and the amount paid was £1,178,477.66.

Summary of Mr Morris' position

13. The winding up of the Scheme and the subsequent transfer of funds had been poorly administered. The forms received in July 2013 were not appropriate. As a result of the excessive delays in dealing with the transfer instruction he had suffered a loss of over £41,500 on switching, despite his best endeavours to meet the deadlines stipulated. (Mr Morris has provided a schedule showing the value of his investments under the Scheme between 13 September 2013 and 9 October 2013.)
14. The Trustees had a responsibility to ensure a smooth, transparent and neutral transfer of his investment on the winding-up of the Scheme. Trying to help the Trustees meet the objectives of the winding-up had resulted in him being significantly worse off than if he had done nothing. He asks that the earlier transfer value be paid, so he is not disadvantaged by the decision to wind-up the Scheme.
15. The instruction given to deal directly with his financial adviser on the transfer of his funds was adequate authorisation. Capita were aware of his wish to transfer to the SIPP Centre on 13 September 2013. The need for a further discharge form exacerbated the delay. His advisers had told him that Capita were always “awkward” and insisted on their own requirements being met for transfers. Mr Morris also points to the SIPP Centre communication of 13 September being marked as received on 24 September, and phone calls of 19 and 20 September, during which his advisers were told that Capita could not trace any papers and that “all of their systems were down” as reflecting the chaos that existed at Capita at this time.
16. The resources allocated to deal with the winding up should have been greater. The Scheme Secretary also left his role in November 2013. In the absence of appropriate resources an embargo should have been placed on transfers during the process.

17. He had completed and returned his forms on 13 September 2013. But he was not told until 26 September by Capita that additional paperwork was required. This was in spite of constant chasers from his advisers as to the progress of the transfer. The fact that the SIPP Centre provided Capita's transfer discharge paperwork and their own transfer form in their letter should have been enough, with no need for Capita to send out their own transfer pack. He also points to wording in the member communication which said that a transfer to an alternative provider would require details of the receiving arrangement and written consent for the transfer to go ahead. This he says was provided by him on 13 September 2013.
18. It had taken an extra four working days for his new pension provider to receive the additional paperwork as Capita had sent this via second class post, with his advisers being told that first class post was only used "if requested", and this was inappropriate for a fund in excess of £1.2m. It was then that he was informed that the paperwork sent also required his signature. To ensure a quick resolution and given the increasing volatility of stock markets he signed an investment discharge form and scanned and sent this to Capita on 2 October 2013, having only received it from his advisers earlier that same day.
19. The cumulative delay (the receipt of the 12 September 2013 letter on 17 September, the time taken to respond to that letter and forms being sent by second class post) came to 18 days.
20. With hindsight his situation could have been avoided with a transfer to the Buyout Plan with Standard Life and then a subsequent transfer from that arrangement. Standard Life had managed to complete a transfer on another of his pension arrangements in only two days.
21. He would have considered moving funds to a safer investment if he had known that the transfer would have taken so long. Also the investment choices he made with the SIPP Centre were more diversified than under the Scheme. (Mr Morris has provided my office with a breakdown of his investments under the SIPP Centre plan.)

Summary of the Trustees' position

22. In their letter to all members of July 2013 they were seeking confirmation from members of which of the options open to them they wished to pursue. It was not intended that the administrators would be able to make payments on receipt of the completed Option form and it was not communicated that this would be the only step necessary nor was it said that the forms in the pack alone would be sufficient. Rather the form would enable them to then progress any requests for transfers, retirement etc with the members chosen providers. The FAQ also said that the option form would only be the start of the transfer process.
23. It was reasonable not to include every form or information request with the initial communication. That had been designed to explain the options available to all members without burdening them with too much documentation that might be irrelevant for their purposes. Requesting every piece of information necessary for each option would have made communications unwieldy and susceptible to low member engagement.
24. Requesting and obtaining a discharge form from a receiving pension scheme and the transferring member was considered a reasonable and necessary part of any transfer process and was consistent with market practice.
25. The winding-up of the Scheme meant administering and settling the benefits of over 8,000 members in an efficient and timely manner. When communicating with the huge number of members they had to deal with communications needed to be fairly generic. In addition and as a result of improper transfers to liberation funds HMRC and the Pensions Regulator had amended their practice for dealing with transfers. HMRC had reiterated that it was the transferring scheme's trustees' responsibility to make the necessary enquiries and to determine that the receiving scheme was a bona fide arrangement. Their communications highlighted that completing a transfer could take a number of months. The transfer process was administered by Capita and would not have been affected by the Scheme secretary's position who would not be involved in the process.

26. They consider that the administration of Mr Morris' transfer was carried out appropriately and without unnecessary delay. In this case the administrators made payment within a month of receiving the Option form and within five days of receiving the discharge form.
27. The provision of papers to the SIPP Centre which needed Mr Morris' signature did not appear to have any material impact on the timing of the transfer. For example they received Mr Morris' discharge on 3 October 2013 but had to wait to 7 October for the SIPP Centre's forms.
28. They note that the SIPP Centre received the relevant papers on 1 October 2013 at the latest but did not provide their completed forms to Capita until 7 October.
29. The relevant statutory regulations permit trustees three months to make a transfer payment after receipt of completed discharge forms. The service level agreement their administrators worked to was ten working days. In normal cases the service level agreement for disinvestment is three working days, and in Mr Morris' case was done in one day. The service level agreement for payment after receipt of the funds is five working days.
30. Mr Morris has said that he suffered a loss of £41,000. From the schedule of loss that he provided it appears that this was based on the difference in fund value between two dates. Mr Morris gave different reasons for this loss such as delays on the part of Capita and the decision to wind-up the Scheme by the company. Their view is that these factors did not cause a loss and were also too remote to be the cause of any loss. The value of investments under the Scheme fluctuated with the value of the pooled funds it was invested in. Any "loss" differs depending on the two points picked. The choice of dates may be determined by a number of factors including those of which the Scheme's representatives had no control, such as the time taken to consider the initial communication of July 2013 and the subsequent submission of forms.
31. Mr Morris had a choice over which funds he was invested in and chose two pooled equity funds, which were volatile compared to other asset classes. Market volatility could have occurred at any time and they had no control over this. Mr Morris could have taken steps to ameliorate that risk by choosing different investments, and the

ability to continue to make switches was highlighted in the communication to members. The value of his fund did not change as a result of the decision to wind-up the Scheme.

32. The time that a transfer to Standard Life may have taken is not relevant. A bulk transfer to an arrangement established for the sole purpose of receiving transfers from the Scheme was different to a transfer to a third party which would have differing requirements. Also the time that Mr Morris' transfer from another unrelated arrangement to the SIPP Centre took is irrelevant.

Summary of Capita's position

33. The initial communications sent out did not intend or say that the completion of the option form would be sufficient to transfer out of the Scheme. Following receipt of Mr Morris' election they processed the case in accordance with their normal administration procedures.
34. The SIPP Centre's own transfer forms were provided to Capita in advance of their own discharge forms. Their process was to request that Capita's own documentation is completed by all relevant parties to ensure that the Trustees receive the appropriate discharge. This was felt to be reasonable and consistent with market practice.
35. Despite the volume of varying member options at that time they believe that the service achieved in processing the transfer of Mr Morris' benefits was efficient and effective. Their normal approach is to issue all forms to the receiving scheme for them to drive the process forward.
36. They process member requests in a timely manner rather than attempting to determine the optimum date for disinvestment. The nature of the investments chosen by Mr Morris meant that the value changed with market movements. The fund prices fluctuated above and below the actual trade date price, both before and after the trade date.
37. Their normal practice is to use second class post. This did not change for the wind-up project.

38. The date for returning the option forms was 30 September 2013. However the date of the bulk transfer to Standard Life (where appropriate to a member) was 21 November 2013.

Conclusions

39. It was clear from the July 2013 mailing that the initial information provided by members who wanted to transfer to an alternative arrangement would not be enough to affect that transfer. Further details would be needed for any transfer to be completed, if that is what a member chose. Also it was said that it could take some time before a transfer was completed.
40. So I am unclear as to why Mr Morris and his advisers thought that the information provided to Capita in the letters of 12 September 2013 would be enough to complete the transfer.
41. Mr Morris says that the transfer discharge form could have been provided with the July 2013 mailing. That is something that the Trustees could have done, but they have given their reasons for not doing so. In my view those explanations are reasonable. Providing forms for all the possible options would have made the task more difficult and costly and would have burdened individual members with forms that they would not need.
42. Mr Morris has suggested that no transfer discharge forms were needed at all and that he had met the requirements by providing the option form along with the SIPP Centre providing their own transfer forms. In my view the Trustees and administrators were entitled to require – as a matter of administrative convenience at their end – that their own discharge forms were completed before any transfer was made.
43. He has also pointed to the member discharge form being sent to SIPP Centre, rather than directly to him, in the letter of 26 September 2013 to the SIPP Centre. However that did not cause a delay in the transfer. It was returned by Mr Morris before the SIPP Centre returned their forms on 7 October 2013. The transfer could not have been completed without both forms.

44. There are three main instances of delay that Mr Morris points to. I have looked at each of these individually and do not find that any of them constitutes such a long period that it would amount to maladministration by Capita. It is not clear when exactly Capita received the letter of 12 September, but I have no reason to disbelieve their assertion that it was received on 17 September. Following on from this I do not consider that their response of 26 September 2013 took too long to send in the circumstances of this particular case. Similarly using second class post when responding was not maladministration.
45. Mr Morris' transfer was completed within a reasonable timescale and he had no reason to think it would be any quicker. It is not the fault of either Respondent that the transfer value fell due to market fluctuations over the period, and I do not uphold the complaint.

Tony King

Pensions Ombudsman

16 February 2015