

Ombudsman's Determination

Applicant	Mr E
Scheme	Lloyds Bank Pension Scheme No.2 (the Scheme)
Respondents	Lloyds Banking Group Pensions Trustees Limited (the Trustee), Willis Towers Watson (Towers)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by either the Trustee or Towers as there is no outstanding injustice to be remedied.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E complains that Towers failed to provide full information about his pension. Mr E says the details Towers did provide were misleading and inaccurate, and caused him to incur £1,000 in unnecessary fees relating to advice on a transfer.

Background information, including submissions from the parties

4. Mr E left the Scheme in July 1988. His statement of deferred benefits (**the Deferred Benefit Statement**) issued by the then administrators of the Scheme, shows a preserved pension of £733 per annum at his date of leaving, payable from age 60, his normal pension age (**NPA**). It shows a guaranteed minimum pension (the **GMP**) at date of leaving and at age 65, his State pension age (**SPA**), of £180 per annum and £2,109 per annum respectively.
5. Occupational pension schemes formerly contracted out on a salary-related basis, are required to comply with the legislative requirements that applies to GMP benefits. Those requirements include ensuring that the member's pension is sufficient to cover the GMP at his/her SPA.
6. The notes in the Deferred Benefit Statement says:

“Revaluation of Benefits

The amounts shown are the values as at date of leaving. These will be increased annually by 5% (or the annual rates of increase in the government’s increase orders, if less). The [GMP] element of your pension is revalued at a fixed rate of 7½% p.a. up to [SPA]. If your revalued preserved scheme benefit at [SPA]. is less than the revalued [GMP] it will be increased to the higher amount.”

7. The notice of GMP liability issued to the Scheme in December 1990 by the Department of Work and Pensions, confirmed a total GMP of £184 per annum at Mr E’s date of leaving. It showed that £20 of the annual GMP was in respect of the service he completed after 5 April 1988. It stated that Mr E’s GMP was subject to fixed rate revaluation at 7.5% per annum to SPA.
8. Mr E obtained a retirement illustration on-line (**NPA Quote1**) as at his NPA, August 2018, on 10 December 2016. Under the full pension option, Towers quoted an estimated pension of £1,633 per annum. Under the lump sum and reduced pension option Mr E was quoted zero tax free lump sum and an annual pension of £1,633.
9. In response to Mr E’s request for a cash equivalent transfer value (**CETV**), Towers issued a transfer value quotation (the **CETV Quote**) on 12 January 2017. Towers quoted a CETV of £69,436 guaranteed until 12 April 2017. In the Statement of Entitlement, Towers restated Mr E’s deferred pension of £733 per annum as at his date of leaving. It was broken down as follows:

GMP built up before 6 April 1988: £163

GMP built up after 5 April 1988: £20

Scheme pension in excess of the GMP accrued after 31 December 1984: £550 per annum.

10. The notes in the Statement of Entitlement said:

“Increases to the deferred pension before the benefit is paid

The total GMP is increased by 7.50% for each complete tax year between the date of leaving the Scheme and GMP age.

The Scheme pension (over the GMP) built up after 31 December 1984 is increased by price inflation up to 5% for each year between the date of leaving the Scheme and [NPA].”

11. Under the Pension Schemes Act 2015 (the **2015 Act**), a pension scheme member must obtain advice where the total value of rights in respect of safeguarded benefits, available to transfer to obtain flexible benefits, is greater than £30,000. That is, appropriate independent advice from a person authorised under the Financial

Services and Markets Act 2000 (the **FSMA 2000**) to carry on a regulated activity, and which meets any other requirements stipulated in regulations.

12. In the member declaration form enclosed in the CETV Quote, Mr E was asked to confirm that he had taken appropriate independent advice, if his CETV was more than £30,000, which it was.
13. Mr E obtained a further retirement illustration as at his NPA (**NPA Quote2**) on 23 January 2017. It showed identical pension figures to those quoted in NPA Quote1. The same day, he appointed a financial adviser (the **IFA**), at a fixed fee of £1,000, and emailed him a copy of the quote.
14. On 1 February 2017, Mr E signed a letter of authority (the **LOA**), authorising his IFA to contact Towers. The LOA said:

“... I have appointed [the IFA] ... as my Independent Financial Adviser in connection with the possible transfer of the above pension.

I authorise them to obtain all relevant information in respect of my existing pension arrangements and other investment products to enable them to provide me with investment advice within the scope of the [FSMA 2000]”.

15. On the same day, Towers wrote to Mr E with details of his deferred pension as at 1 February 2017, in response to his request (the **Updated Statement**). It said:

“Your deferred pension in the Scheme at 1 February 2017 is [£1,632] a year payable from normal retirement age. This pension figure is for information only. We have worked it out based on the Trust Deed and Rules and the laws in force at the date of this letter.

....

You can log onto [the website] to view your deferred benefits and update your personal details...”

16. The IFA contacted Towers for information about Mr E’s benefits on 2 February 2017. The details he requested included current and projected values of benefits at NPA, a CETV, revaluation and indexation rates, survivor benefits, early retirement factors, commutation factors, and the Scheme’s funding position. Towers issued a copy of the CETV Quote to the IFA on 8 February 2017.
17. On 24 February 2017, the IFA queried the GMP element of the estimated pension shown in the Updated Statement. He said:

“You have recently supplied some information regarding [Mr E’s pension]

...With the GMP being [revalued] at 7.5% per annum & the [excess] at RPI capped at 5%... So cannot fathom how the benefits at maturity are £1,632.16 per annum. As the inflationary figures are far higher than this, please can someone double check the numbers...”

18. Towers replied on 3 March 2017, and clarified that, for its calculation of the updated pension, the entire pension was treated as 'excess' and revalued as such. It said that the GMP was treated as an 'underpin'. Towers explained that from SPA, Mr E's pension would be tested against the revalued GMP to ensure that the correct level of GMP was in payment.
19. Following a further exchange of correspondence, Towers confirmed that Mr E's GMP would amount to £2,091 per annum at SPA. It stated that, at SPA, the pension would be tested against the revalued GMP, and Mr E's pension 'stepped up', if the GMP in payment at the time was lower than the revalued amount. It maintained that the CETV it provided in the CETV Quote was correct.
20. On 4 April 2017, Mr E told Towers that his IFA suspected that it had incorrectly calculated his pension. He said that it should be approximately £3,300 per annum. He chased Towers for a response on 26 April 2017, and then several times between 27 April 2017 and 16 May 2017.
21. On 19 May 2017, Towers replied to Mr E's complaint. It restated the pension of £1,632 per annum, and the quoted transfer value (which they noted had since expired). They further explained, that they had reviewed the GMP figure at age 65 and confirmed it was estimated at £2,152.28 a year payable from age 65 and that the figure would be finalised on his 65th birthday. They referred to his telephone call of 4 April 2017 where Mr E had said his financial advisers had told him his pension should be approximately £3,300 and Towers had given incorrect figures. They denied that they had given incorrect figures and clarified:
22. Your pension at normal retirement age of 60 is estimated to be £1,632.16 a year. This will include your excess and GMP elements.
23. At age 65, a test will be completed on your pension to ensure that between ages 60 and 65, the GMP element of your pension increases to an estimated minimum value of £2,152.28 a year.
24. *The GMP and excess figures should not be added together, as the excess figure prior to age 65 includes the value of any GMP.* They said they had not provided a confirmation of total estimated pension entitlement at age 65 to Mr E's IFA as they were unable to predict future increases to benefits before or after payment [*my emphasis*].
25. On 1 June 2017, Mr E asked Towers to confirm that the CETV was correct and for an estimate of his pension at SPA. Towers declined to provide an estimate of benefits payable at 65 on a number of occasions saying that it was not normal practice.
26. In its email of 26 June 2017, Towers quoted a 'total pension' of £3,321 per annum as at SPA, made up of GMP and 'excess' pension of £2,091 per annum and £1,229 per annum respectively. The letter *explained 'we have calculated this on the basis of your GMP payable at 65 in addition to the excess pension revalued to age 60 [my emphasis].'*

27. On 29 June 2017 the IFA wrote to Mr E telling him that the pension that was being offered now was £1,632.16 which would rise to £3,321.39 at age 65, 'broken down as GMP £2,091.44 per annum and Excess £1,229.65 per annum'. The advice was not to transfer.
28. On 3 July 2017, Mr E told Towers that his IFA had recommended that he transfer out of the Scheme. Towers quoted him an updated CETV of £70,021. Then on 10 July 2017, Mr E notified Towers that his IFA had advised him not to transfer.
29. The following day, Mr E complained to the Trustee that he had been misadvised and misled by Towers, concerning the amount of his pension on retirement. The Trustee provided its formal response under stage one of its internal dispute resolution procedure (**IDRP**) on 11 May 2018. It rejected his complaint concerning the alleged financial loss, but acknowledged that Mr E had experienced several delays in relation to his complaint.
30. Mr E has explained that he is not a pension expert. He obtained the CETV Quote and NPA Quote¹ before meeting with his IFA. He calculated that, based on the figures, and his life expectancy of 86 years, the Scheme would pay him £1,632 per annum for 26 years: a total of approximately £42,000, which is approximately £27,000 less than the CETV of £69,436. When he asked Towers to confirm the figures, he explained that he was looking to transfer out of the Scheme. Towers restated that his pension would be £1,632 per annum for life.
31. Mr E maintains that he sought advice solely in relation to a potential transfer from the Scheme. Based on his assessment of the total pension payable, when compared with the CETV, there was a strong case for him to transfer out. When he engaged his IFA, he 'made sure that there was an expectation of a positive recommendation to transfer'. At no time did Towers mention any 'reassessment of his pension at age 65'. It delayed providing any 'meaningful' responses to enquiries, which meant that he had to spend considerable time and effort chasing Towers. He eventually received a proper response on 26 June 2017, which made it clear that his annual pension would be £1,632 from age 60, increasing to £3,321 from age 65. Consequently, his IFA was unable to recommend that he transfer out.
32. Mr E has provided evidence from his IFA to support his position. The IFA explains that Mr E's 'main drivers' for looking to transfer out was the absence of death benefits, and a perceived lack of value when comparing the pension of £1,632 per annum [shown in the Updated Statement], with the CETV of £69,436. Based on their initial assessment, they considered that it was worthwhile investigating this further, at which point the fee was agreed with Mr E, and a request for full details made to Towers. Very early on in the process, he suspected that, given the revaluation rates, Mr E's pension should have been significantly higher than that quoted by Towers. When they reviewed the position using the revised pension figures from Towers, they were not able to support the transfer.

33. Towers says it has reviewed the figures it provided to Mr E: it does not accept that the figures in either the CETV Quote or Updated Statement were wrong. It denies that Towers informed the IFA that the CETV Quote was wrong. Towers has pointed out that it asked the IFA to confirm if he disagreed with the figures but Towers did not receive a response.
34. The Trustee does not agree that Towers is responsible for the financial loss Mr E is claiming. It says it is a legal requirement for members to take independent financial advice before transferring benefits where the value of the benefits exceeds £30,000. Consequently, it is not persuaded that, had Mr E understood his pension would increase from age 65, he would not have sought advice from an IFA in any event.
35. However, the Trustee has acknowledged that there were delays in responding to Mr E's complaint. It has offered him an award of £750 in recognition of the significant non-financial injustice caused to him.
36. Mr E says the matter has caused him significant distress and inconvenience. In addition to the offer of £750, he considers reimbursement of his IFA's fees of £1,000 would be reasonable compensation.

Adjudicator's Opinion

37. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required. The Adjudicator's findings are summarised briefly below:-
 - Given the revaluation basis described in the Statement of Entitlement, when compared with the revaluation used by Towers for the Updated Statement, an Ombudsman would likely consider that the Updated Statement could be construed as misleading by an individual not conversant with the Scheme.
 - In the absence of accompanying notes, confirming the revaluation used to calculate the annual pension of £1,632, it would not have been possible to know, prior to Towers clarifying the revaluation basis used on 3 March 2017, how the pension had been calculated.
 - The sequence of events does not support that Mr E would have acted any differently. He had already engaged his IFA about a possible transfer of his Scheme benefits, before either he or his IFA received the Updated Statement: the LOA, engaging the IFA, was signed by Mr E on 1 February 2017. The Updated Statement is dated 1 February 2017. On balance, it is unlikely that Mr E would have received this before he appointed his IFA.
 - Even if the evidence supported that Mr E appointed his IFA after receiving the Updated Statement, this would not materially change the outcome in the circumstances.

- While the Updated Statement ought to have made the position clear, Towers could not reasonably have foreseen that Mr E would rely on it in the way he has described. It was a legal requirement that Mr E obtain appropriate independent advice on the transfer. Consequently, it would have been more reasonable to assume that any decision on whether to transfer would be made after taking such advice.
 - Mr E has not suggested that his IFA relied on the Updated Statement in a way that was financially detrimental to him.
 - His IFA would have provided advice specific to Mr E's personal circumstances and preferred retirement option. This would likely have taken the form of a more detailed analysis than simply comparing total expected payments against a CETV.
 - Mr E would likely have been significantly inconvenienced by the of the lack of clarity in the Updated Statement, Towers' mismanagement of his subsequent enquiries, and the Trustee's delays in responding to his complaint.
 - The award of £750 made by the Trustee is in line with what an Ombudsman would direct in similar cases, and puts right any injustice Mr E would likely have suffered in relation to this matter.
38. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E has provided his further comments but these do not change the outcome. I mostly agree with the Adjudicator's Opinion. However, I appreciate that, at the point Mr E engaged his IFA, he had already obtained pension figures as at his NPA. I will therefore only respond to other key points made by Mr E for completeness.

Ombudsman's decision

39. Mr E maintains that he was misled by Towers and, as a direct consequence of his reliance on the alleged erroneous figures, he engaged an IFA to give him a recommendation supporting the transfer of his pension to his self-invested personal pension policy (**SIPP**). He argues he should be reimbursed the fixed fee of £1,000, as it is a financial loss directly attributable to the pension figures he claims Towers misquoted him. Mr E says his decision to transfer out was based on the pension of £1,633 per annum shown in NPA Quote1, which was restated to him when he contacted Towers in January 2017. It was also based on the CETV Quote, and the life expectancy of 86 years that he obtained from predictors available on various websites. Once he had received the CETV Quote, he then had all the details he needed. It was at that stage that he decided to transfer out to his SIPP. He only took advice from his IFA because he was legally required to do so. In any case, at the time he appointed his IFA he had not yet received the Updated Statement. I accept this submission but I am not persuaded that the figures stated led directly to Mr E incurring the cost of appointing an IFA. That decision was a result of his own

assessment of whether he would be better off transferring out and the legal requirement that he must get advice before he could do so.

40. Mr E contends that Towers could reasonably have foreseen that he would rely on the pension figures. When he contacted Towers around 18 January 2017, he told Towers he wanted to transfer his pension. I accept that Towers could expect him to rely on figures given to him when carrying out calculations and instructing his IFA. The figures and the information provided with them should have been correct. There is a discrepancy in the ways that Towers have expressed the benefit likely to be payable at 65. In one instance they have explained that the GMP and excess figures should not be added together. Upon being pressed further they provided a total figure calculated by adding the two figures together. They have also admitted delay in clarifying the figures. I am satisfied that there was maladministration, but it occurred after the IFA had been appointed and was not the cause of it.
41. When he initially met with his IFA, prior to his engagement, Mr E says they discussed various considerations connected to the transfer. His IFA did not give any indication at that stage that a transfer would not be in his best interests. At that time, the pension figures were not in question, and it was on this basis that he engaged his IFA. It was only after his IFA looked at the figures in detail that he questioned whether they were correct. But, by then, he had already committed himself to paying the fee of £1,000. Had the original figures reflected the true position, and his IFA declined to provide a recommendation in favour of a transfer, Mr E says he would have refused to pay the fee, on the basis that his IFA had misled him during their initial meeting. I accept that Mr E may well have taken this position, but it does not alter my conclusion that the statement of his benefits at NRA was not directly causative of his instructing an IFA.
42. Mr E says that it was explained to him at the time that, if his SIPP was well managed, it could prove to be more advantageous to transfer his pension and possibly hold part of the transfer payment in cash, within his SIPP. This would have achieved the same level of Scheme pension at minimal risk. This, in his view, made the recommendation in favour of a transfer compelling. However, based on the pension of approximately £3,300 per annum as at SPA, it would be difficult to generate sufficient return to make up the difference between the total expected pension payments from the Scheme and the CETV of approximately £70,000. I see the logic of that position, but it is based on a retrospective understanding of the advice given by the IFA and a calculation approach which adds the GMP and the excess together from age 65, which is not the right basis for comparison. I have to consider what Mr E was likely to have done had he been given the correct picture of his benefits at age 60 and age 65 when he first asked for them. The correct pension from age 65 is only £2,152. If he had used that figure in his calculations I am not persuaded that Mr E would have made a different decision about whether he wanted to explore transferring out.

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43. That said, I accept that Mr E would likely have been inconvenienced by the delays on the part of both the Trustee and Towers. Given the sequence of events, I consider that the amount of £750 for non-financial loss, already offered by the Trustee, is sufficient and therefore do not make any further award.
44. Therefore, I do not uphold Mr E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
18 September 2018