

Ombudsman's Determination

Applicant	Mr N
Scheme	Premier Foods Pension Scheme (the Scheme)
Respondent	The Trustee of the Premier Foods Pension Scheme (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee of the Scheme.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N is complaining about the reduction that is being applied to his Cash Equivalent Transfer Value (**CETV**) under the Scheme.

Background information, including submissions from the parties

4. Mr N is currently a deferred member of the Scheme and has now reached normal retirement age (**NRA**) of 60.
5. He also has a small element of his pension under the Scheme based on a defined benefit career average arrangement with a NRA of 65.
6. On 7 March 2017 and 24 March 2017, Mr N was provided with CETV details in relation to his benefits under the Scheme.
7. The first statement incorrectly showed a CETV of £1,606,914 and, to allow for the Scheme's actuarial deficit, a reduced CETV of £489,578.
8. The second statement on 24 March 2017 correctly showed an unreduced CETV of £2,054,939 and a reduced CETV of £1,078,514.
9. However, this statement contained incorrect Lifetime Allowance calculations based on the current statutory limit of £1 million, not Mr N's protected allowance of £1.5 million, and was corrected in a subsequent email of 20 April 2017. The Trustee offered £500 to Mr N in respect of the confusion caused by these errors.

PO-18320

10. The Trustee decided to reduce these CETVs, and all other transfer value quotations, to ensure the impact of members transferring out of the Scheme was not detrimental to those remaining. It did this because the Scheme is currently underfunded.
11. Because of an updated funding insufficiency report of 9 March 2017, showing the need for a revised reduction, Mr N's CETV was recalculated by the Trustees on 20 April 2017 to show an unreduced CETV of £2,070,710 and reduced CETV of £1,185,333.
12. The Trustee said it had adopted a Pension Protection Fund (**PPF**) based approach to the reduction of CETVs as it considered this the fairest way of ensuring that transferring members and non-transferring members are treated equally.
13. This means the Trustee has adopted a 'priority order' similar to the order that would have applied if the Scheme were to be wound up, first securing benefits payable under the PPF, and then the rest of the benefits of the Scheme, to the extent that funds permit.
14. However, Mr N asserts that as the Scheme is not in the PPF, is not in danger of entering the PPF, and is not in a PPF assessment period, the Trustee should not be using a PPF approach to the reduction of CETVs.
15. He also asserts that the reduction is discriminatory against older members and longer serving members, and that the reduction effectively prohibits a transfer away from the Scheme.
16. Finally, he questions if the Trustee is unfairly affecting his CETV when compared to other members, and wants to ensure that the reduction in place affects all members requesting a CETV in the same way. He asserts that it is likely that his benefit entitlement under the Scheme could be one of the largest, and he wants to be certain that he is not being penalised because of this.

Adjudicator's Opinion

17. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee.
18. The Adjudicator's findings are summarised briefly below:-
 - The Pensions Ombudsman could not set aside a discretionary decision taken by scheme trustees, unless the trustees had:
 - Taken irrelevant considerations into account.
 - Failed to take any relevant considerations into account.
 - Committed some other procedural impropriety.

- Acted in such a way that no reasonable body of trustees, properly directing themselves, could act.
- However, the decision of the Trustee to adopt a cautious approach to the recovery of the underfunding of the Scheme, and the implementation of an extended deficit recovery period, would not be covered by any of the above.
- There had been no involvement by the Pensions Regulator, no breach of its code of practice, or concern from it over the approach taken by the Trustee.
- A finding of maladministration could not be made regarding decisions taken in the long-term interests of all the members of the Scheme, albeit on a modest risk basis, with a long-term recovery plan.
- The Trustee did not have to negotiate the terms of CETVs provided to individual members of the Scheme and the Pensions Ombudsman has no power to compel them to do so.
- The Pensions Ombudsman also could not make a direction that would have an adverse impact on individuals not subject to the complaint, such as in this instance other members of the Scheme.
- Therefore, the Pensions Ombudsman could not make a direction for Mr N to receive an unreduced CETV, as that would impact unfavourably on the overall funding position of the Scheme and potentially on other members.
- Finally, Mr N was correct in that if he remained in the Scheme, and his pension came into payment, then in line with other pensioner members of the Scheme, it would not currently be subject to a reduction.
- However, any active members that were still paying contributions into the Scheme would still be subject to the same level of reduction if they stopped paying into the Scheme, became deferred members, and requested transfers out of the Scheme.
- Therefore, Mr N was not being treated differently to any other deferred member of the Scheme.
- As Mr N had now passed NRA, the priority order adopted by the PPF benefited him more than a flat rate reduction, which could also have been made by the Trustee.
- It was appreciated that Mr N might suffer a loss if a transfer away from the Scheme were to take place, and in Mr N's view the financial reduction was effectively preventing him from transferring to another scheme. However, if Mr N remained in the Scheme and later took his benefits from the Scheme he would not be subject to a reduction, beyond what might be applied to his membership in the career average section of the Scheme which had a higher NRA of 65. His benefits from the main section of the Scheme would be paid in full.

- Overall, the Trustee had not taken any irrelevant considerations into account, failed to take any relevant considerations into account, or committed some other procedural impropriety. It had also, given the underfunded position of the Scheme, acted in such a way that a reasonable body of trustees, properly directing themselves, could act.
 - The Trustee had admitted that it originally miscalculated Mr N's CETV and issued him with incorrect Lifetime Allowance calculations, which caused confusion as a result, so, there was no dispute that a problem had occurred.
 - However, it was the opinion of the Adjudicator that the complaint should not be upheld because the Trustee had already offered compensation of £500 in respect of the errors surrounding the calculation of the first CETV and incorrect Lifetime Allowance calculations.
 - Mr N had subsequently been provided with a summary of a worked example of the calculation to show the reduction in the CETV, the Trustee had offered him £1,500 towards the cost of independently checking his CETV calculation. The Adjudicator considered that no further direction would be made by the Pensions Ombudsman on this, if the case were to be referred to him for determination.
19. In response to the Adjudicator's Opinion Mr N says that the proposed reduction in his CETV is a decision which no reasonable Trustee would take. The rationale is flawed, and is more detrimental to him, as opposed to other members of the Scheme. He disagrees that the CETV provided reflects the level of benefit he would otherwise receive from the PPF having reached retirement age.
20. He also refutes the Trustee's suggestion that payment of an unreduced CETV to him places other members of the Scheme at risk, and as the Trustee remains silent on the number of requests for CETV's, it is not unreasonable to suspect this is relatively small.
21. He adds nothing suggests that the payment of unreduced CETV's would result in an increase in the number of members making such requests, and if such a situation arose, the Trustee would have several options available, to deal with any risks.
22. He says it is clear from Trustee's responses that no meaningful discussion over his dispute has taken place, and it has simply upheld the decision of a subcommittee acting on flawed advice, which he asserts is inappropriate and contrary to the Dispute Resolution Procedure principles. He asserts that there should have been a meaningful discussion, and appropriate advice obtained.
23. Overall, the Trustee agreed with the conclusion of the Opinion, but clarified that there are no longer any active members of the Scheme, as the Scheme is closed to future accrual. However, it does not consider that this affects the logic and reasoning of the Adjudicator's Opinion, or its conclusion.

PO-18320

24. In response to Mr N, the Trustee agrees that the PPF will pay a higher proportion of a member's pension once the member reaches the retirement age for a pension scheme, and this is reflected in transfer calculations. However, as the Scheme is unable to pay the transfer equivalent of full PPF benefits to all members, it must reduce transfer values such that all members would receive the value of the same proportion of their PPF benefits, whatever the amounts of their individual PPF benefits are. This is motivated by, and consistent with, the Trustee's duty to protect the security position of remaining members and to treat members equitably.
25. The Trustee also says that the original dispute was considered and determined by the Trustee's Compliance Committee on behalf of the Trustee Board. In accordance with the provisions of the Trust Deed governing the Scheme, and is the Trustee's regular practice, upon receipt of the complaint the Trustee's secretary contacted all the members of the Trustee Board, and it was agreed that the matter should be delegated to its Compliance Committee for determination.
26. Mr N's correspondence with the Trustee after that initial determination has also been included in meeting papers for full Trustee Board Meetings and reviewed and discussed. Draft responses to that correspondence have been circulated and all the Trustee's Directors have been involved in agreeing the responses.
27. Further to this the initial decision to apply reductions to transfer values, and agreement on the principles to be followed, were taken by the full Trustee Board based on advice received from the Scheme Actuary.
28. The Trustee's Directors have been aware of the basis of the calculation of the relevant transfer values including the reductions being made from time to time, but it is not necessary or appropriate for the Trustee's Directors to be involved with the detail of a specific CETV calculation.

Ombudsman's decision

29. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. He has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.
30. I agree with the findings of the Adjudicator and the responses from the Trustee. Specifically, that the decision to apply reductions to transfer values, and agreement on the principles to be followed, were taken by the full Trustee Board based on advice received from the Scheme Actuary.
31. A finding of maladministration cannot be made regarding decisions taken in the long-term interests of all the members of the Scheme, albeit on a modest risk basis, under a long-term recovery plan.

PO-18320

32. The decision to adopt a PPF priority approach to the reduction of CETVs to allow for underfunding and to protect the security of remaining members of the Scheme, does not in my view amount to maladministration. Particularly as I understand that this approach benefits Mr N more than a flat rate reduction, which could also have been made by the Trustee.
33. I appreciate that Mr N considers that he is not receiving the true value of what would be his unreduced pension payable at NRA, even if the Scheme were to enter the PPF, but the Trustee must have regard to all member's interests.
34. The liability to pay an annual pension would not have the same impact on the security of the Scheme and its remaining members, as an unreduced CETV at a time when the Scheme is already in deficit.
35. I consider that there has been no breach of due process, and that it would not be expected for individual Directors of the Trustee Board to be involved with an individual CETV calculation, only the overall decision to reduce transfer values, and that decision was taken by the full Trustee Board based on advice received from the Scheme Actuary. The Trustee is entitled to accept that advice.
36. Therefore, I do not uphold Mr N's complaint and make no further direction regarding the £500 already offered in respect of the errors surrounding the calculation of the first CETV and incorrect Lifetime Allowance calculations, or the £1,500 offered towards the cost of independently checking the revised CETV calculation.

Anthony Arter

Deputy Pensions Ombudsman
29 June 2018