

Ombudsman's Determination

Applicant	Mr David Brackley
Scheme	Travel Automation Systems Retirement Benefits Scheme (the Scheme)
Respondent	Capita Employee Benefits (formerly Bluefin) (Capita)

Complaint summary

Mr Brackley has complained that Bluefin (now Capita) unreasonably delayed the provision of a transfer quotation and the subsequent processing of his request to transfer which has meant that the transfer of his benefits was not completed before Her Majesty's Revenue & Customs (**HMRC**) delisted the Guernsey-based qualifying registered overseas pension scheme (**QROPS**) to which he wanted to transfer. Mr Brackley says that the failure to transfer at the time his request was made has led to a fall in the value of the transfer value of £30,314. In addition, as he was unable to transfer to the Guernsey-based QROPS he will now have to pay income tax on his pension benefits (which he would not have had to pay had the transfer been made to the Guernsey-based QROPS).

Summary of the Ombudsman's Determination and reasons

The complaint is not upheld against Capita. Bluefin's failure to complete the transfer to the QROPS was not as a consequence of unreasonable delays in the provision of a cash equivalent transfer value quotation, or in the subsequent processing of his request to transfer. However, Bluefin's failure to keep Mr Brackley updated as to the delay in producing his cash equivalent transfer value quotation was maladministration. Nevertheless, Bluefin should not be required to compensate Mr Brackley for their maladministration as it has not caused him any injustice.

Detailed Determination

Relevant legislation

1. Section 93A of the Pension Schemes Act 1993 (**PSA 1993**), says as follows:

“(1) The trustees or managers of a pension scheme must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights in relation to categories of benefits other than money purchase benefits.

...

(3) For the purposes of this Chapter a member's "statement of entitlement" is a written statement of the amount of the cash equivalent at the guarantee date of the transferrable rights to which the application under subsection (1) relates.

(4) In this Chapter "the guarantee date" means the date by reference to which the value of the cash equivalent is calculated, and must be-

- (a) within the prescribed period beginning with the date of the application, and
- (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member..."

2. The Occupational Pension Schemes (Transfer Values) Regulations 1996 (the **Transfer Values Regulations**) define the "guarantee date". Regulation 6(1) and (1A) of the Transfer Values Regulations say as follows:

“(1) Subject to paragraph (1A), the guarantee date in relation to a statement of entitlement must be –

- (a) within the period of three months beginning with the date of the member's application [...] for a statement of entitlement; or
- (b) where the trustees are unable to provide a statement of entitlement for reasons beyond their control within the period specified in sub-paragraph (a), within such longer period not exceeding six months beginning with the date of the member's application as they may reasonably require.

(1A) Where a relevant scheme has received an application, the guarantee date must be either–

- (a) within the period, or, where applicable, the longer period, set out in paragraph (1); or
- (b) within a period of three months beginning on the date on which the relevant direction ceases to have effect, whichever ends later..."

3. Section 94(1) PSA 1993, entitled 'Right to a cash equivalent', says as follows:

“A member of a pension scheme who has received a statement of entitlement under section 93A acquires a right to take the cash equivalent shown in that statement in accordance with this Chapter.”

4. Section 95(1) PSA 1993, provides that a member of a pension scheme who has acquired a right to take a cash equivalent may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent. Section 99 PSA 1993, sets out the duties of the trustees or managers of a scheme after the member has requested a cash equivalent. It says, at section 99(2):

“(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95 they must do what is needed to carry out what the member requires-
(a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the guarantee date shown in the relevant statement of entitlement...”

Material facts

5. Mr Brackley says that he requested a statement of entitlement - which would contain a cash equivalent transfer value (**CETV**) - on 20 June 2011. (This is disputed by Bluefin, who say that the request was actually made on 28 June 2011.).
6. Capita have confirmed that they have not been able to locate “any records of correspondence or exchanges” between Bluefin and Mr Brackley or his IFA between 28 June 2011 and 19 January 2012. Mr Brackley has also confirmed that neither he or his IFA contacted Bluefin in that period.
7. On 19 January 2012, Bluefin sent a “statement of deferred entitlement... and cash equivalent transfer value statement together with the relevant transfer authority forms” to Mr Brackley’s Independent Financial Adviser (**IFA**).
8. In the opening paragraph of the letter Bluefin said that they were writing “further to your [i.e. Mr Brackley’s IFA’s] request of 20 June 2011”. The letter also said as follows:

“We require the following from the **receiving scheme**:

- a copy of the acceptance letter from HMRC granting QROPS status, and
- the attached receiving scheme declaration to be completed confirming that the transfer value will be accepted.
- Completion of section 6 of HMRC form CA1890 (enclosed)

Once the forms and certificate(s) have been received it may be necessary for us to request additional information before the transfer can proceed. You will be notified if this is the case.

The completed documents will need to be received within three months of the guarantee date shown on the enclosed statement...”

9. The “enclosed statement” referred to a guarantee date of 6 January 2012.

10. Bourse Pension Trustees Limited (the **Bourse Trustees**) were the trustees of the Guernsey-based receiving scheme, the Bourse Retirement Trusts Scheme (the **Bourse Scheme**).
11. The Bourse Trustees say that they received application forms to join the Bourse Scheme from Mr Brackley's IFA on 13 February 2012 and, upon receipt, began their due diligence process. The Bourse Trustees say that Mr Brackley was "formally accepted as a member" of the Bourse Scheme on 14 February 2012. Mr Brackley then began the process of complying with the formalities required to transfer his benefits from the Scheme into the Bourse Scheme, which included collating the necessary transfer documentation.
12. Bourse Trustees say that on 23 February 2012 they sent the necessary transfer request documentation to Bluefin. When they had not received confirmation of receipt Bourse Trustees called Bluefin for an update on 29 February 2012 (and left a message).
13. Bluefin contacted Bourse Trustees on 1 March 2012. Bluefin advised Bourse Trustees that they needed to receive a completed HMRC Form CA1890 (which had to be signed by Mr Brackley) and to see his passport or birth certificate.
14. On 26 March 2012 Bourse Trustees sent the signed HMRC Form CA1890 to Bluefin, enclosing Mr Brackley's original birth certificate (in respect of the latter, which Bourse Trustees say they received from Mr Brackley that day).
15. Bourse Trustees rang Bluefin for an update on the transfer on 28 March 2012. Bourse Trustees say that they were advised that all systems were unavailable at Bluefin at that time (presumably, IT systems) and so they couldn't provide an update.
16. Bourse Trustees contacted Bluefin by telephone on 29 March 2012. During the call Bluefin confirmed receipt of HMRC Form CA1890 and Mr Brackley's birth certificate. Bourse Trustees say that on that call they were told that the trustees of the ceding scheme needed to sign a release form in respect of the Mr Brackley's Additional Voluntary Contributions (**AVCs**). Bluefin purportedly told Bourse Trustees that the turnaround time for this task was "a few days".
17. Bourse Trustees emailed Bluefin for an update on the progress of the transfer on 3 April 2012.
18. On 5 April 2012 HMRC introduced new legislation which, broadly, prohibited Guernsey-based pension schemes from being QROPS. The legislation came into force on 6 April 2012. So from 6 April 2012 Bourse Trustees were no longer able to accept a transfer of Mr Brackley's benefits. (Any transfer after that date would have been deemed an unauthorised payment by HMRC and thus be subject to significant tax charges.)
19. Bourse Trustees informed Bluefin of the legislative change and its effect on Mr Brackley's intended transfer by telephone on 11 April 2012.

20. The transfer to the QROPS did not subsequently take place.
21. Mr Brackley has subsequently transferred the value of his benefits in the Scheme to another arrangement.

Summary of Mr Brackley's position

22. The delays which occurred in providing a CETV quotation and subsequently processing his request to proceed with the transfer to the QROPS were unreasonable.
23. Bluefin should have provided a CETV quotation within three months of his request on 20 June 2011. The period could be extended to six months but if it was he should have been provided with "good reasons" as to why it was delayed beyond three months. There is no reason why it should have been delayed beyond six months.
24. Having received the CETV quotation, there was no need to complete HMRC Form CA1890 and provide proof of identity. Bluefin's assessment that such evidence would be required if - amongst other things - he had left the relevant employment over ten years ago, was incorrect. He had in fact only left the relevant employment just over nine years previously.
25. Bluefin were incorrect to say that the value of his pension could not be transferred without his AVCs. Indeed, they subsequently- in August 2012 - transferred the value of his pension to a new arrangement whilst leaving his AVCs in the Scheme (for ten days before they too were transferred).
26. Had Bluefin acted in accordance with their obligations the transfer would have been completed before HMRC delisted the QROPS.
27. He has been "financially penalised" by around £30,000 as a consequence of Bluefin's delays and poor administration.

Summary of Capita's position

28. There are two valid reasons why the transfer quotation was provided "three weeks past the six month maximum" (i.e. in January 2012) stipulated for CETVs:
 - Firstly, prior to receipt of Mr Brackley's transfer request of 28 June 2011, a deed was signed by the trustees of the Scheme in order to amend the date of equalisation of benefits. Following execution of this deed member benefits needed to be recalculated and a guaranteed minimum pension (**GMP**) reconciliation exercise was commenced, both with a view to ensuring that member records accurately reflected the benefits to which the member was entitled.
 - Secondly, there was a lack of clarity at that time as to whether Consumer Price Index (**CPI**) or Retail Price Index (**RPI**) revaluation should apply to member's benefits. The trustee's legal advisors clarified this question in January 2012.

(Incidentally, the advice given in January 2012, was a reversal of their initial advice on the question from December 2010.)

29. The effect of these two factors was that CETVs were temporarily put on hold.
30. The untimely provision of a CETV in this case was a one-off occurrence and a 'green breach' (as defined by the Pensions Regulator) and so was not reported to the Pensions Regulator.
31. After the CETV was provided, Bluefin were entitled to seek further evidence - in the form of evidence of Mr Brackley's identity and a completed HMRC Form CA1890 - because such request originated from abroad, was in respect of a transfer to a scheme that was also abroad and took place ten years after the member had left employment.
32. In respect of seeking evidence of Mr Brackley's identity, Capita have submitted that Bluefin needed to verify Mr Brackley's details to enable them to calculate his benefit entitlement (i.e. which required verification of his date of birth), to enable them to complete their internal fraud prevention and money laundering due diligence and to enable the trustees to comply with their duty under trust law to pay benefits to the correct person.
33. In respect of the request to complete HMRC Form CA1890, completion of this form was a specific requirement when GMP rights were being transferred out of the country. The transfer quotation made it clear that there was a GMP element within Mr Brackley's retained benefits. If the form had not been completed HMRC would have continued to hold the Scheme liable for the contracted-out benefits accrued within the Scheme, despite a transfer having been made that extinguished this liability. In addition, Mr Brackley was made aware of the need to complete HMRC Form CA1890 in Bluefin's letter to his IFA of 19 January 2012.
34. Bluefin was only in possession of all the necessary documentation to proceed with the transfer request on 28 March 2012. There was a "disclosure requirement" of transfer within six months of 19 January 2012, so the deadline for completion of the transfer was 19 July 2012. On 11 April 2012, Bluefin were informed by Bourse Trustees that they could no longer accept the transfer. So there was no breach of the disclosure requirement (and, in any event, Bluefin spent most of the period of 19 January 2012 to 6 April 2012, waiting for information from Mr Brackley, his IFA or Bourse Trustees).
35. In respect of Mr Brackley's complaint about his AVCs, rule 21.2 of the Scheme's rules allow AVCs to be transferred and the main benefit to be left in the Scheme but the opposite is not permitted. It follows that Bluefin were correct to say that the value of Mr Brackley's pension could not be transferred without his AVCs.

Conclusions

Background

36. Mr Brackley's complaint is essentially about two distinct time periods. The first concerns Bluefin's delay in producing a CETV and the second concerns the failure to make a transfer of the amount comprising of the CETV to the QROPS. I will consider each time period separately.

Production of a CETV

37. Bluefin have acknowledged that it took longer than six months for them to produce a CETV in respect of Mr Brackley. However, they submit that they had valid reasons for delaying producing a CETV and say that any breach of the law should be classified as a 'green breach' in accordance with the Pensions Regulator's guidance.
38. It is my view that Bluefin did have valid reasons for delaying production of a CETV in this case. The member benefit recalculation and GMP reconciliation exercises were instigated due to a change to the Scheme's equalisation date in mid-2011; if they had not been undertaken the CETV provided to Mr Brackley it would not have reflected the amended position. The same conclusion applies to the question as to whether CPI or RPI revaluation should apply to members' benefits.
39. Mr Brackley and Bluefin disagree as to when a request for a CETV was made; Mr Brackley submitting that it was on 20 June 2011, Bluefin that it was 28 June 2011. Given Bluefin's statement in their letter of 19 January 2012 that the request was made on 20 June 2011, it seems likely, on the balance of probabilities, that the date the request was made was 20 June 2011. However, irrespective of which date is in fact correct, Bluefin's failure to produce a statement of entitlement within six months of either date constituted a breach of regulation 6(1)(b) of the Transfer Values Regulations.
40. The information submitted by Bluefin suggests that the trustees' legal advisors did not opine on the CPI/RPI question until January 2012. This is incorrect; the legal advice Bluefin refer to is, in fact, dated 21 December 2011. Nevertheless it seems likely that it could have taken a short period for the advice to reach Bluefin (it was not, after all, provided for them) and a further period for the recommendations made by that advice to be applied to Mr Brackley's CETV calculation. It was therefore not unreasonable for Bluefin to have taken until 19 January 2012 to have issued the statement of entitlement to Mr Brackley.
41. It follows, that although Bluefin failed to provide a statement of entitlement within six months of it having been requested - which is a breach of the Transfer Value Regulations - it is my view that they had valid reasons for doing so and that, in the individual circumstances, the delay of just over four weeks (beyond the six month statutory deadline) was justified. It was justified because had Bluefin not delayed the statement of entitlement produced may have contained an incorrect CETV figure.

42. That is not to say, however, that Bluefin could not have done anything differently. Bluefin failed to contact Mr Brackley at the point they were aware that they would not be able to provide the CETV within six months. Accordingly, they did not give Mr Brackley reasons for the delay extending beyond six months. Whilst there is no explicit obligation in the Transfer Value Regulations for Bluefin to have given Mr Brackley reasons for the production of the CETV having taken beyond three months (or, it follow, six months), the Transfer Value Regulations say that any extension beyond three months should be for “reasons beyond their [i.e. here, Bluefin’s] control”. Although the reasons for the delay were beyond Bluefin’s control, it would have been reasonable for them to have communicated the reasons for the delay to Mr Brackley after three months had elapsed since submission of his application for a CETV (and certainly when six months had elapsed).
43. Bluefin’s failure to provide reasons for the delay constitutes maladministration. However, the failure to provide reasons has not caused Mr Brackley to suffer any injustice. Mr Brackley would not, on the balance of probabilities, have acted any differently had he been given reasons for the delay in producing a CETV. He, or his IFA, did not know at that time that the QROPS was going to be delisted - so whilst he might have wanted to have received the statement sooner, Bluefin’s late production of it did not cause him to act any differently to how he would have done had he done so. Further, whilst I recognise that it was not Mr Brackley or his IFA’s obligation to chase Bluefin in the relevant period, their failure to do so indicates that Mr Brackley has not suffered distress and inconvenience as a consequence of the delay in its production. It follows that Bluefin’s maladministration has not caused Mr Brackley to suffer any significant non-financial injustice.
44. Bluefin say that the breach of the Transfer Value Regulations was a ‘green breach’ in accordance with the Pensions Regulator’s Code of Practice 01 (entitled ‘Reporting breaches of the law’). The Pensions Regulator’s Code of Practice 01 provides that there are situations in which employers, trustees and other pensions professionals should report breaches of the law to the Pensions Regulator. The relevant code-related guidance provides examples of different breaches, with details as to whether each should be reported to the Pensions Regulator. Mr Brackley has not complained that Bluefin should have reported their breach of the Transfer Value Regulations to the Pensions Regulator, and any finding I could make is not relevant to his complaint or the remedy he seeks. It follows that the status of the breach under the Pensions Regulators’ Code of Practice 01 is not something that I need to consider in these circumstances.

Payment of CETV to the QROPS

45. The ‘guarantee date’, for the purposes of section 95(2)(a) PSA 1993, is 6 January 2012 (not 19 January 2012, as Capita submit). It follows that, in accordance with that statutory provision, Bluefin had an obligation to complete the transfer of the CETV to the QROPS by 6 July 2012. On 11 April 2012, Bluefin were informed by Bourse Trustees that they could no longer accept the transfer. As Bluefin were informed that

the transfer of the CETV was no longer possible within the six month period (i.e. before 6 July 2012), they did not act in breach of section 95(2)(a) PSA 1993.

46. Mr Brackley has also complained that Bluefin unnecessarily delayed the transfer of the CETV by requesting that he complete HMRC Form CA1890 and by requesting that he provide details of his identity. Further, he complains that he was incorrectly told by Bluefin that the value of his pension could not be transferred without his AVCs.
47. In respect of confirming the details of his identity, it is my view that Bluefin were entitled to ask Mr Brackley to do this. Whilst I appreciate that it was incorrect for Capita to have said that Mr Brackley had left the relevant employment over ten years ago (it was, in fact, just over nine years), Bluefin were still, in my view, entitled - in the interests of paying the correct benefits from the Scheme - to seek this information from Mr Brackley. After all, the details were sought to enable Bluefin to verify that they were paying the benefits accrued by the correct person at the correct level, which was certainly within the wider interests of the Scheme.
48. Similarly, it is my view that Bluefin were entitled to request that Mr Brackley complete an HMRC Form CA1890. The guidance applicable to the Form CA1890 - the 'CA14 Termination of Contracted-out Employment Manual' - says that where there is a GMP element to a pension being transferred overseas the Form CA1890 must be completed. There was a GMP element to Mr Brackley's benefits in the Scheme. It follows that, in the circumstances, Bluefin were correct to request that Mr Brackley complete the form.
49. Finally, I also consider that Bluefin, in telling Mr Brackley that the value of his pension could not be transferred to the QROPS without the value of his AVCs, acted correctly. Rule 21.2 of the rules governing the Scheme says as follows:

"Where Rule 21.1 applies, the Trustees will pay a Transfer Value to secure transfer credits under a scheme of which the Member has become a member being a Registered Pension Scheme or a Qualifying Recognised Overseas Pension Scheme.

The Trustees shall notify in writing the administrator of the receiving scheme the amount of the Transfer Value which represents contributions by the Member. The Trustees may at the Member's request pay a Transfer Value in respect of any additional voluntary contributions paid by the Member under Rule 5.6 whether or not the remainder of the Member's benefits under the Scheme are being transferred."

50. Rule 21.2 says that AVCs can be transferred to the QROPS either alongside the remainder of Mr Brackley's benefits or on their own. The rules do not say, however, that AVCs can be left in the Scheme when the remainder of a member's benefits are transferred-out. So, in effect, the rules of the Scheme make no provision for a transfer of the main portion of an individual's benefits without his AVCs. In light of this, I find

that Bluefin were correct in telling Mr Brackley that the value of his pension could not be transferred to the QROPS without the value of his AVCs.

51. Mr Brackley has argued that Bluefin had clearly changed their view by August 2012 as, at this time, they transferred his AVCs in a separate transaction to the transfer of the remainder of his benefits. I have not investigated this allegation as this is essentially a different complaint; it relates to a transfer which is not the subject of this investigation. Further, the allegation does not affect my finding, made previously, that the Scheme's governing documentation does not make provision for a transfer of the main portion of an individual's benefits without his AVCs and so Bluefin were correct in telling Mr Brackley that the value of his pension could not be transferred to the QROPS without the value of his AVCs.
52. Given the findings I have made, it follows that Mr Brackley's complaint is not upheld.

Anthony Arter

Pensions Ombudsman
29 July 2015