

## Ombudsman's Determination

Applicant	Mr S
Scheme	Fidelity Master Trust - Sytner Group Retirement Plan Section ( <b>the Plan</b> )
Respondents	Fidelity International ( <b>Fidelity</b> ) ZEDRA Governance Limited ( <b>ZEDRA</b> )

## Outcome

1. I do not uphold Mr S' complaint and no further action is required by Fidelity or ZEDRA.

## Complaint summary

2. Mr S' complaint concerns the implementation of his pension sharing order (**the PSO**). Specifically:-
  - He disagrees with the methodology Fidelity used for the purposes of calculating the value of the pension credit on the valuation day (**the Valuation Day**). He considers that it is illogical and has resulted in an inequitable outcome.
  - Due to excessive delays in Fidelity and ZEDRA responding to his complaint, he missed the opportunity to transfer his benefits and has potentially suffered financial loss as a direct result.
  - He considers that he has also suffered distress and inconvenience as a consequence of those delays.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. Mr S was an active member of the Plan, which is a money purchase occupational pension arrangement.

5. On 22 September 2017, the Family Court made a PSO under the Welfare Reform and Pensions Act 1999 (**the 1999 Act**). Mr S' former spouse was awarded 57.87% of his cash equivalent (**CE**) value in the Plan.
6. Pitmans Trustees Limited, the then independent trustee of the Plan, has since been acquired by ZEDRA.
7. Section 28 of the 1999 Act, provides that activation of a PSO takes effect when a PSO is made under the Matrimonial Causes Act 1973. Supplementary regulations are found in the Pensions Sharing (Implementation and Discharge of Liability) Regulations 2000 and the Pension Sharing (Valuation) Regulations 2000.
8. A pension credit is awarded to the former spouse when a PSO is implemented. The amount of the pension credit will be the relevant percentage of the member's shareable rights, as stipulated in the PSO, immediately before the transfer day (**the Transfer Day**). A pension debit, of an equivalent value to the pension credit, is applied to the scheme member's shareable rights under the pension arrangement.
9. For the purposes of section 29(7) of the 1999 Act, the Valuation Day:

"...is such day within the implementation period for the credit under subsection (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee."
10. Section 29(8) of the 1999 Act, defines the Transfer Day as the day the PSO takes effect. A PSO takes effect on the later of:
  - the date of the decree absolute,
  - 28 days from the date of the pension sharing order; and
  - where an appeal has been lodged, the effective date of the order determining that appeal.
11. Where the arrangement is an occupational pension scheme, the relevant benefits are determined as outlined in paragraph 12 below.
12. For a member in active membership, the relevant benefits are those the member would be entitled to assuming pensionable service ended immediately before the Transfer Day. For other categories of members it is the benefits, or future benefits, the member is entitled to under the pension arrangement immediately before the Transfer Day.
13. Section 29 (2) of the 1999 Act, states:

"Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) **is the specified percentage of the cash equivalent of the relevant benefits on the valuation day** [emphasis added in bold]."

14. Section 29 (7) states:

“For the purposes of this section, the valuation day is such day within the implementation period for the credit under subsection (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee.”

15. Section 31(1): Reduction of benefit, states:

“(1) Subject to subsection (2), where a person’s shareable rights under a pension arrangement are subject to a pension debit, each benefit or future benefit—

(a) to which he is entitled under the arrangement by virtue of those rights, and

(b) which is a qualifying benefit,

is reduced by the appropriate percentage”.

16. Section 34(1) provides that the implementation period shall begin on the later of:

- the Transfer Day; and
- the date the pension arrangement receives all the information it requires (under regulation 5 of the Pensions on Divorce etc (Provision of Information) Regulations 2000.

17. Among other things, schedule 2 of The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (**the 2008 Regulations**), sets out amendments to the provisions of:-

- The Pensions on Divorce etc. (Provision of Information) Regulations 2000.
- The Pension Sharing (Valuation) Regulations 2000.
- The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (**the 2000 Regulations**).

18. Schedule 8 of the 2008 Regulations, states:

“(9) Where the person with pension rights is an active member of an occupational pension scheme on the transfer day, the value of the benefits which he has accrued under that scheme must be calculated and verified on the assumption that the member had made a request for an estimate of the cash equivalent that would be available to him were his pensionable service to terminate on the transfer day”.

19. Schedule 6 of the 2008 Regulations, states:

“In the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000—

(a) in regulation 1(2) (interpretation)—

(i) in the appropriate alphabetical place, insert—

““the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996;” and

...

(b) for regulation 10 (calculation of the value of appropriate rights), substitute—

“10 Calculation of the value of appropriate rights

The value of rights conferred on a person entitled to a pension credit are to be calculated in a manner which is consistent with the methods adopted and assumptions made when transfers of other pension rights are received by the person responsible for the pension arrangement.””

20. Regulation 8 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000, sets out the information which a person responsible for a pension arrangement must provide in a notice of discharge of liability (**the Notice of Discharge**) once a PSO or provision has been implemented. The information should be provided no later than the end of the period of 21 days beginning with the day on which liability in respect of the pension credit has been discharged. Regulation 8 is set out in the Appendix.

21. On 12 December 2017, the Court granted a decree absolute.

22. On 28 February 2018, Fidelity calculated the value of Mr S’ unit holding in the Plan. It amounted to £1,694,064.79, based on his total holding of 714,795.27 units as at 11 December 2017.

23. ZEDRA selected 28 February 2018, as the Valuation Day.

24. On 1 March 2018, Fidelity instructed the investment manager to disinvest units worth £980,355.29. This represented 57.87% of the value of Mr S’ unit holding on 28 February 2018.

25. On 2 March 2018, the units were disinvested. By that time, the value of the 714,795.27 units Mr S held as at 11 December 2017 had decreased in value to £1,673,335.72. So, Fidelity disinvested 5,124.27 additional units to provide £980,355.29 to Mr S’ former spouse in respect of the value of the pension credit.

26. On 6 March 2018, Fidelity notified Mr S that the PSO had been implemented and enclosed a Notice of Discharge. It confirmed that the value of his pension account

amounted to £1,694,064.79 as at 28 February 2018. The Notice of Discharge also confirmed that the value of the pension debit amounted to £980,355.29.

27. The Notice of Discharge indicated that the value of Mr S' pension pot amounted to £713,709.49, following deduction of the value of the pension debit and charges for implementing the PSO.
28. On 7 March 2018, the value of the pension credit was transferred to the receiving pension arrangement.
29. Under the Pensions Act 1995 and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008, trustees or managers of occupational and trust-based stakeholder pension schemes must have dispute resolution arrangements in place. They can operate a two-stage procedure, with a specified person undertaking the first stage decision or adopt a single stage process.
30. Code 11: Dispute resolution - reasonable periods, issued by the Pensions Regulator (**tPR**) "applies to trustees or managers of occupational pension schemes and trust based stakeholder schemes, and to the 'specified person' making a decision in a two-stage dispute resolution procedure".
31. Code 11 says tPR expects that a decision will be made within four months of receiving the application for a dispute. It also says that applicants should be notified of the decision usually no later than 15 working days after the decision has been made. It recognises that the circumstances of a particular dispute may mean that it is not possible to complete the procedure within the time limits specified.
32. On 14 March 2018, Mr S made a complaint to Fidelity concerning the implementation of the PSO.
33. On 2 May 2018, Fidelity issued a response. Fidelity set out how the pension credit had been calculated for the purposes of implementing the PSO and said it had followed the correct process.
34. On 18 June 2018, Mr S received a copy of the response after requesting an update on his complaint.
35. On 4 July 2018, Mr S contacted Fidelity and was informed that he could raise a dispute under the internal dispute resolution procedure (**IDRP**).
36. On or around 23 August 2018, Mr S invoked the IDRP.
37. On 6 September 2018, Fidelity advised Mr S that he would receive a response within two months.
38. On 3 December 2018, Mr S contacted Fidelity for an update on his complaint.

39. The following day, Mr S received an email from Fidelity, which had been encrypted. In the period that followed, there were various exchanges between the parties regarding the difficulty Mr S was experiencing with accessing the email.
40. On 11 December 2018, Fidelity agreed to contact ZEDRA for an update on Mr S' complaint.
41. On 15 February 2019, the Secretary to the Trustee issued a response under the IDR (the **Final Response**) on behalf of the ZEDRA Trustee Board (the **Trustee Board**) upholding the original decision.
42. On 27 February 2019, Mr S requested an update on his complaint.
43. On or around 1 March 2019, Mr S received an encrypted e-mail (the **March Email**), which he was unable to open. He subsequently received a copy of the Final Response. It is summarised below:-
  - Mr S and his former spouse were notified separately that the value of the pension credit awarded to his ex-spouse would amount to £980,355.29.
  - As the value of the pension credit had been determined based on the Valuation Day of 28 February 2018, the number of units that were ultimately disinvested, to obtain the value of £980,355.29, was higher than 57.87% of Mr S' unit holding.
  - The 1999 Act supports the process that was followed by Fidelity. Specifically, the disinvestment of a higher than specified percentage of units to obtain the exact CE of the relevant benefits on the Valuation Day.
  - The Trustee Board had reviewed the 1999 Act, the legislation that governed the implementation of PSOs. The provisions were set out in Section 29, in particular section 29(2).
44. Mr S was offered £250 (the **Offer**), in recognition of the delay in responding to his complaint.
45. Fidelity has advised The Pensions Ombudsman (**TPO**) that its service level agreement (**SLA**) for each action in connection with the implementation of a PSO is five working days. Once all the documents have been received, and the relevant dates set, Fidelity aims to sell a sufficient number of units within five working days.
46. **Mr S' position is summarised below:-**
  - The value of the additional units that was transferred to his former spouse is approximately £12,700, based on recent unit prices. He appreciates that the value of his unit holding could have moved in the opposite direction, and he may have been financially better off as a result. However, he expected an outcome that was equitable; it is clear that he did not receive this.

- ZEDRA maintains that the process adopted by Fidelity complies with the relevant legislation, specifically section 29(2) of the 1999 Act. Section 29(2) in turn relies on how the CE is defined, as referred to in section 29(3).
- He questions how the value Fidelity used for the purposes of implementing the PSO “can be categorised as a cash equivalent when it cannot be converted to a cash equivalent until two business days later”.
- The process adopted by Fidelity cannot be right in law. On the Valuation Day, Fidelity should have established that it needed to disinvest 57.87% of the units. He should not have to bear the financial loss for the fact that a few days after the Valuation Day those units became worthless.
- The process is clearly inequitable and bizarre. To illustrate this point, if the PSO had specified that 99% of his shareable rights should be transferred to his former spouse, Fidelity would have disinvested units to the value of £1,677,124.13. However, on the date of the disinvestment the value of the units in his pension account would have been lower at £1,673,335.72. He questions how the process would work in the scenario he has described.
- When he contacted Fidelity on 3 December 2018, a period of more than three months had elapsed since the matter had been referred to ZEDRA. Nearly nine months had passed since he first raised his complaint. In the intervening period, he was actively working with his financial adviser to transfer his pension to another pension arrangement (**the Receiving Scheme**).
- As his complaint was ongoing, he was prevented from proceeding with the transfer; he did not want to prejudice the outcome of his complaint by transferring his benefits before the matter had been resolved. During this period, the regulations affecting advice on pension transfers were tightened. Consequently, his financial adviser was unable to recommend a transfer to the Receiving Scheme.
- It has since transpired that his investments in the Plan did reasonably well during that period. Consequently, it is difficult to determine whether he has suffered any financial loss, when compared with the investments he would otherwise have made in the Receiving Scheme.
- After numerous exchanges of correspondence with Fidelity concerning its communication system, he realised that if he wanted a response to his complaint, he would need to contact ZEDRA directly. He spent approximately 30 minutes trying to open the March Email. He would like a distress and inconvenience award that recognises the time he spent trying to move the IDR process along.
- The Final Response, like the earlier correspondence he received from Fidelity, does not adequately address the issue he raised in his complaint. The delay between Fidelity setting a value, and encashing the units, ultimately meant that

58.59% of his unit holdings was transferred to his former spouse, to his financial detriment.

**47. The Trustee's position is summarised below:-**

- The relevant benefits were calculated as at the 11 December 2017. 28 February 2018 was selected by ZEDRA as the Valuation Day, following receipt of all the required documentation to implement the PSO. Both dates were communicated to Mr S. The units were then sold the next working day.
- A statement was issued to the parties advising them that the value of the pension credit would be £980,355.29.
- The Notice of Discharge warned "that the value of the percentage set out in the [PSO] will be adjusted to take account of market movements to the date the [PSO] is implemented."
- ZEDRA made the Offer in recognition of the distress and inconvenience that the delay in responding to Mr S' complaint under the IDRPs may have caused him.

**Adjudicator's Opinion**

48. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Fidelity or ZEDRA. The Adjudicator's findings are summarised below:-

*The implementation of the PSO*

- The Adjudicator explained that the CE is the cash value of a member's pension rights that is converted into pension rights in the receiving scheme on transfer. The methodology for the calculation and verification of CEs, as set out in the 2008 Regulations, is also used for pension sharing activity.
- The Adjudicator noted that, for implementation purposes, and the creation of pension debits and credits, the Pension Sharing (Valuation) Regulations 2000 apply. Regulation 4(1) provides that the value of pension rights in respect of an active, deferred or pensioner member of an occupational pension scheme must be calculated and verified in accordance with regulations 7 to 7C and 7E(1) to (3) of [the Occupational Pension Schemes (Transfer Values) Regulations 1996] (calculation and verification of cash equivalents), as if—  
  
“(a) in the case of benefits other than money purchase benefits, the member has made an application for a statement of entitlement under section 93A of the 1993 Act [Pension Schemes Act 1993] (right to statement of entitlement: benefits other than money purchase); or



(b) in the case of money purchase benefits, the member has made an application under section 95 of the 1993 Act (ways of taking right to cash equivalent) to use the cash equivalent of those benefits”.

- The date on which the valuation of the CE takes place is generally referred to as the valuation date (**the Valuation Date**). The CE is not guaranteed.
- The Adjudicator noted that the PSO specified that 57.87% of Mr S' CE was to be transferred to his former spouse. This represented the Court's consideration of the valuation of the CE, and equitable split of the matrimonial assets, and would have been based on the valuation of Mr S' CE on the Valuation Date.
- The Adjudicator explained that the actual value to be transferred, in respect of the pension credit, was the specified percentage of the CE of the relevant benefits on the Valuation Day. The percentage should have been expressed as a whole number in the PSO. Following implementation of a PSO, a corresponding debit of the appropriate amount would be made from the member's shareable rights, in accordance with section 29 (1) of the 1999 Act.
- ZEDRA, as trustee, was the party responsible for the pension arrangement. The Adjudicator explained that for the purposes of section 29 (7) of the 1999 Act, the Valuation Day is any day within the implementation period that ZEDRA may specify by notice in writing to the transferor and transferee. Fidelity had advised that the parties were notified that 28 March 2018, had been selected as the Valuation Day. Mr S has not disputed this.
- Fidelity was required to implement the PSO, on behalf of ZEDRA, within the four month implementation period. It was not in dispute that Fidelity had complied with this requirement.
- The Adjudicator said that the Transfer Day was the date of the decree absolute, 12 December 2017, as this postdated the period of 28 days after the date of the PSO. The Adjudicator highlighted that the Notice of Discharge did not strictly comply with regulation 8 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000, as it did not specify the Transfer Day. However, the Adjudicator did not consider that this changed the outcome of Mr S' complaint.
- The Adjudicator agreed, having reviewed the relevant provisions, that Fidelity had to disinvest additional units because on the Valuation Day, 57.87% of Mr S' CE amounted to £980,335.29. Under section 29(1) of the 1999 Act, Mr S' shareable rights under the relevant arrangement became subject to a debit of the appropriate amount.
- The Adjudicator highlighted that section 29(2) provided that the appropriate amount was the specified percentage of the CE on the Valuation Day. In this case, it was 57.87% of £1,694,064.79. It followed that Mr S' former spouse was entitled to a pension credit of £980,335.29, even if the consequence of this was that a higher percentage of the value of his CE on 2 March 2018, was ultimately

transferred in respect of the pension credit. The Adjudicator explained that it was the CE of the relevant benefits on the Valuation Day, which applied for the purposes of implementing a PSO and for the creation of pension debits and credits.

#### *The length of time taken to implement the PSO*

- In the Adjudicator's view, there was no legislative provision concerning a delay on the part of the scheme between the Valuation Day and the date of disinvestment, except where the delay extends beyond the four month implementation period. Similarly, the Adjudicator was not aware of any applicable provision in the divorce legislation that catered for a divergence between the value of the units on the Valuation Day and the value on the date the units were encashed.
- However, the Adjudicator acknowledged that an excessive period of delay would risk a divergence between the CE on the Valuation Day and the final value of the member's unit holding. It would be appropriate for the pension scheme in question to disinvest the units urgently.
- The Adjudicator said she had to consider whether the two working days it took Fidelity to complete the disinvestment process justified a finding of maladministration. The Adjudicator noted that there were no legislative provisions governing the disinvestment process.
- In the Adjudicator's opinion, the Ombudsman (**the PO**) would consider whether the time that was taken at each step of the process was justified by the tasks that had to be carried out. The PO would also consider the standard that could reasonably be expected of a scheme administrator in similar circumstances. The scheme's SLA would usually set out the turnaround times for completing certain actions.
- The Adjudicator said that the evidence indicated that the disinvestment process required actions on the part of the investment manager. The Adjudicator noted that the disinvestment process was completed within two working days. The Plan's SLA for each action, in respect of pension sharing activity, was five working days. In view of this, the Adjudicator said that the time Fidelity took to complete the disinvestment process was reasonable in the circumstances.

#### *Delay during the IDR process*

- The Adjudicator noted Mr S was not claiming he was misinformed that it would prejudice the outcome of his complaint if he transferred his benefits while he was awaiting a response under the IDR. Moreover, it was not evident that he had suffered a financial loss as a consequence of the delays he experienced during the IDR process. Even if the evidence indicated that he had been financially disadvantaged, Mr S could have proceeded with the transfer to mitigate his financial position. Consequently, the Adjudicator did not consider that it would be appropriate for ZEDRA or Fidelity to award redress in this regard.

- The Adjudicator noted that Code 11 stated that tPR expects that a decision will be made on a dispute within four months of receiving the application under the IDR. It also stated that applicants should be notified of the decision usually no later than 15 working days after the decision had been made.
- The Adjudicator said that the evidence indicated that ZEDRA adopted a shorter timeframe of two months for issuing a decision but exceeded that timeframe by approximately three months plus on this occasion. ZEDRA should have notified Mr S that it was not possible to complete the IDR within the timeframe it had specified. This would have reassured Mr S that the matter was being investigated and would have saved him the inconvenience of having to contact Fidelity for an update.
- The Adjudicator acknowledged that the delay Mr S experienced during the IDR process would likely have caused him some frustration and inconvenience. Having reviewed the evidence, the Adjudicator did not consider that it warranted the minimum award of £500, that the PO would direct for non-financial injustice. The Adjudicator considered that the matter would likely have been compounded by the fact that he did not take steps to mitigate his financial position.

49. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S, which are summarised in paragraph 50 below.

**50. Mr S' additional submissions:-**

*The calculation of the CE*

- His main complaint concerns the calculation of the CE, rather than the time it took Fidelity to implement the PSO. He considers that the fundamental issue is whether it is possible to calculate a "cash equivalent" of something that is clearly not equivalent to or convertible to cash". As the pension rights in question do not have a CE the only sensible, logical and equitable action would have been to disinvest 57.87% of the units.
- The definition of cash in the Oxford English Dictionary is 'ready money'. It follows that a CE must be something that is readily transferable to cash, and has a store of value equivalent to an amount of cash. He questions how a unit in a pension scheme, where the value can only be determined one or two days later, can be considered as a CE, unless that CE is guaranteed, which it was not in his case.
- He also questions whether his shareable rights under the Plan were reduced by the appropriate percentage. Section 31(1) of the 1999 Act explicitly states that where a person's shareable rights are subject to a pension debit, each benefit or future benefit is reduced by the appropriate percentage, as defined in section 31(5). Consequently, where the relevant order, or provision, specifies the

percentage value to be transferred, the appropriate percentage would be as specified in the order or provision. Furthermore, in section 31(4) it states:

“The provisions of this section override any provision of a pension arrangement to which they apply to the extent that the provision conflicts with them.”

- In his view, the calculation of the pension debit is at odds with the way the Adjudicator considers that the pension credit should be calculated. The Adjudicator relies on the 2008 Regulations to support her findings. If this interpretation is correct, then it is clearly at odds with the 1999 Act. Consequently, the provisions in the 1995 Act would prevail.
- Fidelity’s methodology does not make logical or practical sense and can result in a bizarre and inequitable outcome, as in this case. To illustrate this point, if the PSO had specified that 99% of his shareable rights should be transferred to his former spouse, Fidelity would have disinvested units to the value of £1,677,124.13. However, on the date of the disinvestment the value of his unit holding in the Plan would have been lower at £1,673,335.72.
- The Adjudicator acknowledged that the Notice of Discharge indicated that the value of the percentage set out in the PSO “will be adjusted to take account of market movements to the date the [PSO] is implemented.” However, this is not what occurred in practice.
- The issue here is not that Fidelity did not disinvest the sum immediately; rather, it is the value Fidelity chose to disinvest. Fidelity was using a value which would have applied if the disinvestment had been completed two days before the Valuation Day. That value was then used to determine a CE, which Fidelity acknowledged would be adjusted to take account of market movements. In his view, the outcome the Adjudicator has supported in the Opinion, “is clearly contrary to section 31(1) of the [1995] Act, is bizarre (when there is clearly a simpler and more logical methodology) and leads to an inequitable outcome”.

*Delays during the IDR process potentially causing financial loss and non-financial injustice*

- He assumed at the time that it would be prejudicial to the outcome of his complaint if he transferred his benefits while the dispute was ongoing. He made arrangements to consolidate his pension benefits from three separate pension arrangements into the Receiving Scheme. His objective was to improve investment performance on his pension savings. At the very minimum, he aimed to achieve this by reducing costs through consolidation. He transferred pension benefits from one of his other arrangements to the Receiving Scheme. By the time Fidelity/ZEDRA had concluded the investigation of his complaint, he had to obtain up to date financial advice, and because of changes in legislation, the new

advisers were unable to recommend a transfer from the Plan to the Receiving Scheme.

- It is not possible to determine whether he has lost out financially, or gained as a consequence of his inability to complete the transfer. While the Adjudicator acknowledged that the investments in the Plan did quite well during this period, the Adjudicator only expressed “this in nominal terms, rather than against [performance in] investment classes generally during this period”. His reason for reiterating this point is to put the non-financial injustice he has experienced into context.

#### *Non-financial injustice*

- The Offer equates to 0.0015% of the value of his unit holding as at the Valuation Day. If the purpose of the PO’s powers to make awards for non-financial injustice includes ensuring that trustees take the IDR process seriously, then a penalty of 0.0015% of the member’s pension pot is trivial. The PO should consider directing a more significant award.

### **Ombudsman’s decision**

#### *The calculation of the CE*

51. Under Part X of the 1993 Act, the PO has power to investigate and determine:

- complaints that an actual or potential beneficiary has sustained injustice as a consequence of maladministration by the trustees, manager, administrators or employer of an occupational pension or personal pension scheme; and
- disputes of fact or law referred by an actual or potential beneficiary against the trustees, manager, administrators or employer of an occupational or personal pension scheme.

52. In relation to complaints of injustice sustained as a consequence of maladministration involving an infringement of legal rights, and disputes of fact or law, it is well established that the PO must decide the complaint or dispute in accordance with established legal principles rather than what he considers just and reasonable (*Henderson v Stephenson Harwood* [2005] PLR 209 and *Arjo Wiggins v Henry Thomas Ralph* [2009] 079 PBLR paragraphs 13-14).

53. The point for me to decide is whether Fidelity and/or ZEDRA made an error in law in the calculation of the CE in respect of the pension credit. On reviewing the evidence, I am satisfied that the relevant provisions were applied correctly in this case. Section 29 (2) of the 1999 Act, provides that:

“Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) **is the**

**specified percentage of the cash equivalent [CE] of the relevant benefits on the valuation day** [emphasis added in bold].”

54. The PSO specifies that 57.87% of Mr S’ CE is to be transferred to his former spouse. The CE represents the realisable value of Mr S’ shareable rights calculated and verified with reference to the Valuation Day. The Valuation Day in this case is 28 February 2018. The CE as at the Valuation Day amounted to £1,694,064.79. Consequently, the amount to be transferred in respect of the pension credit, on implementation of the PSO, was the specified percentage of the CE as at the Valuation Day.

*Non-financial injustice*

55. I have power to make reasonable awards for non-financial injustice (distress and inconvenience) arising as a consequence of maladministration. However, my awards for non-financial injustice are not intended to be punitive. I agree with the Adjudicator that Mr S would likely have been inconvenienced by the delays he experienced during the IDR process. Having reviewed the sequence of events, I am not persuaded that the matter warrants the minimum award of £500 I would direct for non-financial injustice.
56. I do not uphold Mr S’ complaint.

**Dominic Harris**

Pensions Ombudsman

2 July 2024

## Appendix

### **The Pensions on Divorce etc. (Provision of Information) Regulations 2000 (as amended)**

#### **“Provision of information after the implementation of a pension sharing order or provision**

- 8.— (1) The person responsible for the pension arrangement shall issue a notice of discharge of liability to the transferor and the transferee, or, as the case may be, the person entitled to the pension credit by virtue of regulation 6 of the Implementation and Discharge of Liability Regulations no later than the end of the period of 21 days beginning with the day on which the discharge of liability in respect of the pension credit is completed.
- (2) In the case of a transferor whose pension is not in payment, the notice of discharge of liability shall include the following details—
- (a) the value of the transferor’s accrued rights as determined by reference to the cash equivalent value of those rights calculated and verified in accordance with regulation 3 of the Valuation Regulations (calculation and verification of cash equivalents for the purposes of the creation of pension debits and credits);
  - (b) the value of the pension debit;
  - (c) any amount deducted from the value of the pension rights in accordance with regulation 9(2)(c) of the Charging Regulations (charges in respect of pension sharing activity—method of recovery);
  - (d) the value of the transferor’s rights after the amounts referred to in subparagraphs (b) and (c) have been deducted; and
  - (e) the transfer day.
- (3) In the case of a transferor whose pension is in payment, the notice of discharge of liability shall include the following details—
- (a) the value of the transferor’s benefits under the pension arrangement as determined by reference to the cash equivalent value of those rights calculated and verified in accordance with regulation 3 of the Valuation Regulations;
  - (b) the value of the pension debit;
  - (c) the amount of the pension which was in payment before liability in respect of the pension credit was discharged;

- (d) the amount of pension which is payable following the deduction of the pension debit from the transferor's pension benefits;
  - (e) the transfer day;
  - (f) if the person responsible for the pension arrangement intends to recover charges, the amount of any unpaid charges—
  - (i) not prohibited by regulation 2 of the Charging Regulations (general requirements as to charges); and
  - (ii) specified in regulations 3 and 6 of those Regulations;
  - (g) how the person responsible for the pension arrangement will recover the charges referred to in sub-paragraph (f), including—
  - (i) whether the method of recovery specified in regulation 9(2)(d) of the Charging Regulations will be used;
  - (ii) the date when payment of those charges in whole or in part is required; and
  - (iii) the sum which will be payable by the transferor, or which will be deducted from his pension benefits, on that date.
- (4) In the case of a transferee—
- (a) whose pension is not in payment; and
  - (b) who will become a member of the pension arrangement from which the pension credit rights were derived,
- the notice of discharge of liability to the transferee shall include the following details—
- (i) the value of the pension credit;
  - (ii) any amount deducted from the value of the pension credit in accordance with regulation 9(2)(b) of the Charging Regulations;
  - (iii) the value of the pension credit after the amount referred to in sub-paragraph (b)(ii) has been deducted;
  - (iv) the transfer day;
  - (v) any periodical charges the person responsible for the pension arrangement intends to make, including how and when those charges will be recovered from the transferee; and
  - (vi) information concerning membership of the pension arrangement which is relevant to the transferee as a pension credit member.



- (5) In the case of a transferee who is transferring his pension credit rights out of the pension arrangement from which those rights were derived, the notice of discharge of liability to the transferee shall include the following details—
- (a) the value of the pension credit;
  - (b) any amount deducted from the value of the pension credit in accordance with regulation 9(2)(b) of the Charging Regulations;
  - (c) the value of the pension credit after the amount referred to in sub-paragraph (b) has been deducted;
  - (d) the transfer day; and
  - (e) details of the pension arrangement, including its name, address, reference number, telephone number, and, where available, the business facsimile number and electronic mail address, to which the pension credit has been transferred.
- (6) In the case of a transferee, who has reached normal benefit age on the transfer day, and in respect of whose pension credit liability has been discharged in accordance with paragraph 1(2), 2(2), 3(2) or 4(4) of Schedule 5 to the 1999 Act (pension credits: mode of discharge—funded pension schemes, unfunded public service pension schemes, other unfunded pension schemes, or other pension arrangements), the notice of discharge of liability to the transferee shall include the following details—
- (a) the amount of pension credit benefit which is to be paid to the transferee;
  - (b) the date when the pension credit benefit is to be paid to the transferee;
  - (c) the transfer day;
  - (d) if the person responsible for the pension arrangement intends to recover charges, the amount of any unpaid charges—
    - (i) not prohibited by regulation 2 of the Charging Regulations; and
    - (ii) specified in regulations 3 and 6 of those Regulations; and
  - (e) how the person responsible for the pension arrangement will recover the charges referred to in sub-paragraph (d), including—
    - (i) whether the method of recovery specified in regulation 9(2)(e) of the Charging Regulations will be used;
    - (ii) the date when payment of those charges in whole or in part is required; and
    - (iii) the sum which will be payable by the transferee, or which will be deducted from his pension credit benefits, on that date.

- (7) In the case of a person entitled to the pension credit by virtue of regulation 6 of the Implementation and Discharge of Liability Regulations, the notice of discharge of liability shall include the following details—
- (a) the value of the pension credit rights as determined in accordance with regulation 10 of the Implementation and Discharge of Liability Regulations (calculation of the value of appropriate rights);
  - (b) any amount deducted from the value of the pension credit in accordance with regulation 9(2)(b) of the Charging Regulations;
  - (c) the value of the pension credit;
  - (d) the transfer day; and
  - (e) any periodical charges the person responsible for the pension arrangement intends to make, including how and when those charges will be recovered from the payments made to the person entitled to the pension credit by virtue of regulation 6 of the Implementation and Discharge of Liability Regulations”.