

Ombudsman's Determination

Applicant	Mr G
Scheme	AXA Group Pension Scheme (the AXA Scheme)
Respondent	AXA UK Pension Trustee Limited (the Trustee)

Outcome

1. I do not uphold Mr G's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr G complains that he has been disadvantaged by a scheme merger (the **merger**) and that the actions of the Trustee have denied him his "Pension Freedoms". He also asserts that his complaint was not given full and proper consideration and that the Trustee failed to provide him with any supporting evidence of its actions.
3. Specifically, he says that the Trustee and the WS Moody Scheme Trustee between them:
 - failed to undertake reasonable and appropriate due diligence when considering a merger of the two schemes;
 - failed to protect members of the WS Moody section (the **Moody Section**) properly;
 - misadvised members at the time of the merger;
 - failed to take proper Actuarial advice on the matter of CETVs available to members of the WS Moody Retirement Benefits Scheme (the **Moody Scheme**);
 - undertook the merger in the interests of the employer(s);
 - failed to allow him to present his case in person and give the dispute full and proper consideration; and
 - weakened the security of members' benefits inappropriately.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. The trustee of the Moody Scheme was SBJ Group Pension Scheme Trustees Limited (the **SBJ Group**). Mr G named the SBJ Group as one of the respondents to his complaint. However, the SBJ Group dissolved on 31 July 2018.
6. Mr G was a member of the Moody Scheme. On 31 October 2016, the Moody Scheme was merged with the AXA Scheme and Mr G became a deferred member of the Moody Section of the AXA Scheme which, the Trustee says, is not a segregated section.
7. He is now a pensioner member of the AXA Scheme, having retired on 8 April 2019, aged 63.
8. In February 2016, Mr G was provided with a Cash Equivalent Transfer Value (**CETV**) Statement of Entitlement from Broadstone, the administrators of the Moody Scheme, calculated as at January 2016. The CETV quoted was £73,374. The CETV was guaranteed until May 2016. It seems Mr G decided not to transfer and the guarantee period expired.
9. On 30 September 2016, an Announcement (the **Announcement**) was issued to Pensioner Members and Deferred Members of the Moody Scheme by its trustees about a merger of the Moody Scheme with the AXA Scheme (relevant extracts from the Announcement can be found in the Appendix).
10. In August 2017, Mr G requested a CETV quotation from the AXA Scheme, which he received in October 2017. The CETV quoted was £65,409 calculated in accordance with the basis used by the AXA Scheme at the time. He did not transfer.
11. Mr G received a second CETV quote from the AXA Scheme on 13 September 2018 for £76,814. Again, he opted not to transfer.
12. On 29 January 2018 (before obtaining the CETV quote mentioned in paragraph 11 above), Mr G complained to the AXA Scheme's UK Pensions Manager as an operational matter. He said:
 - The CETV basis used by the AXA Scheme was considerably worse than that used by the Moody Scheme. This was contrary to the Announcement and to the terms of the Merger Deed dated 31 October 2016 (the **Deed**).
 - He had been in correspondence with the Actuary to understand the difference. In essence, the AXA Scheme used CETV assumptions that were materially worse than those previously used by the Moody Scheme. The most significant of these, as explained by the Actuary, was the discount rate assumption.

- He did not believe the CETV quoted by the AXA Scheme represented a “Best Estimate”.

13. Mr G pointed out that the Announcement said:

“Following a review by AXA UK plc of the various closed pension schemes in existence across the Group, it has been agreed...that all the assets and liabilities of the WS Moody Scheme will be transferred to the AXA Scheme.

You do not need to take any action as a result of this Notice the benefits to be provided to and in respect of you will be the same in the AXA Scheme as they were in the WS Moody Scheme as will the rights and options attaching to your benefits. Your benefits will be of equal value...The only difference will be that your benefits will be provided out of the AXA Scheme instead of the WS Moody Scheme.

In particular, the Trustee has obtained a certificate from the Actuary that the value of members’ benefits, including discretionary benefits, under the AXA Scheme, will be at least the same as those which applied under the WS Moody Scheme.

Moreover, the security of your benefits will be enhanced by a strong employer, AXA UK plc being primarily responsible for funding of the AXA Scheme...

...there is no need for you to take any action.”

14. The Announcement also stated that:

“This Announcement confers no right to benefits. Rights to benefits are conferred in accordance with the terms and conditions of the trust deed and rules of the WS Moody Scheme and, after the transfer, the AXA Scheme as amended and, where applicable, the transfer agreement...”

15. However, the Trustee’s Report dated March 2017 said:

“SBJ Scheme Mergers – “Four new sections of the Scheme were created and the existing benefits for these members replicated in the new sections””

16. Mr G argued that if it were the Trustee’s intention to amend the CETV calculation basis, then the notices to members were misleading. Instead, he (as a “live” CETV case), should have been given due notice of the detriment that he was about to suffer.

17. The Pensions Manager responded to Mr G’s letter on 27 February 2018 rejecting his arguments and his request for a recalculation of his CETV on the Moody Scheme basis saying:

“In relation to transfer values, your right under the WS Moody Scheme was to request a transfer value which would be calculated on a basis determined by the WS Moody trustee (and it was open to the WS Moody trustee to change this calculation basis at any point without notifying you). Your right under the WS Moody Scheme was a right to request a transfer value, not a right to a particular basis of

CETV calculation. Following the merger under the Scheme you also have the right to request a transfer value which is calculated on a basis determined by the Trustee. Your right to request a transfer value was not changed by the merger.”

18. Mr G disputed this rejection. He said he had a statutory right to a CETV – not a right to request one, but a right to take one. This was therefore an option on his part. The Announcement clearly stated that:

“The benefits to be provided to and in respect of you will be the same in the AXA Scheme as they were in the WS Moody Scheme as will the rights and options attaching to your benefits”

and

“The only difference will be that your benefits will be provided out of the AXA Scheme instead of the WS Moody Scheme”

and

“The Trustees have obtained a certificate from the actuary that the value of members’ benefits, including discretionary benefits, under the AXA Scheme, will be at least the same as those which applied under the WS Moody Scheme”.

19. He said that, taking the Pension Manager’s quoted phrase, it was not his right to request a transfer value that was not changed by the merger. Instead it was his right to a transfer value, his option, that was not changed by the merger. Therefore, in accordance with the Announcement, his option should be protected. The value of his benefits (the CETV) should be “at least the same” value as under the Moody Scheme. As such, he disputed the calculation of the CETV quoted to him in October 2017.
20. He questioned the adoption of the AXA Scheme’s CETV calculation basis for the Moody Section. He believed that the Trustee should, at least, adopt a Section specific CETV calculation basis for the Moody Section. The basis should be at least as good (at least as prudent) as a replica of the basis in force prior to the merger
21. As confirmed in the Announcement, the merger was a result of “a review by AXA UK plc of the various closed pension schemes across the Group...”. Following that review, it was “agreed between the Trustee, the Trustees of the WS Moody Scheme, AXA UK plc and Oldco (No 1) Ltd (the Principal Employer of the WS Moody Scheme) that all the assets and liabilities of the WS Moody Scheme would be transferred to the Scheme”.
22. The Announcement went on to say that as mentioned above, “You do not need to take any action as a result of this notice”.
23. The transfer was without member consent. The necessary Actuarial Certificate stated:

“Benefits - The benefits provided in the Transferring Scheme are to be mirrored in the Receiving Scheme”.

and

“No assumptions were required since transfer credits and discretionary benefits in the Receiving Scheme are the same as the rights to be transferred”.

24. Mr G noted the phrase “mirrored in the Receiving Scheme” and asserted it should apply to CETV calculations.
25. He said that the Moody Scheme was fully funded (104%) on a “Best Estimate” basis, with a surplus of £78,000 and 88% funded on a “Technical Provisions” basis according to the actuarial valuation at 1 April 2014. The AXA Scheme was 91% funded on a “Technical Provisions” basis according to the actuarial valuation at 31 March 2015. The Trustee had declined to disclose the funding level on a “Best Estimate” basis.
26. He had not undertaken a full analysis and comparison of the actuarial valuation Technical Provisions bases. However, he noted that the Moody Scheme used a discount rate of 20 year Gilts, while the AXA Scheme used swaps + 2.7%. He believed that the Moody assumption was more prudent.
27. The Moody Scheme was broadly invested 78% in an amalgam of funds of Government Gilts, Index-Linked Gilts and Non-Gilts against a strategy of 80% in such assets, with the remainder in return-seeking assets. The AXA Scheme was broadly invested 45% in “return seeking assets” with the remainder invested in liability matching assets such as bonds. The Trustee had explained that this asset allocation was used to justify the use of a discount rate for the CETV calculation.
28. The Announcement stated that “Moreover the security of your benefits will be enhanced...” Mr G complains that there was no enhancement, and that the reduction in asset allocation from 80% Gilts to 55% bonds, represented a reduction in security for the Moody Section, regardless of the support of AXA UK plc for the AXA Scheme. He claimed that the reduction in security should lead to a reduction in the discount rate, as opposed to an increase.
29. Mr G says members were given no advice that the employer covenant supporting the AXA Scheme prior to merger was weak. As such members were unable to judge the veracity of the statement that benefit security would be enhanced.
30. He also referred to the Actuary’s response (the **response**) forwarded to him on 18 January 2018. It stated that “it has taken some time to locate the relevant information for the WS Moody Scheme”. This, he says, indicates that no proper due diligence was undertaken at the time of the merger.
31. With regard to the Moody Scheme basis for CETV calculations, the response stated:

“I [the Actuary] will monitor the financial conditions and alert the Trustee if my opinion is that this proposed transfer value basis can no longer be considered to be a best estimate within a reasonable margin of materiality”.

32. Mr G also referred to the Pension Regulator (**TPR**) Regulatory Guidance (the **Guidance**) on the best estimate method for calculating CETVs. It states that trustees must seek advice from their actuary. He complains that the Trustee has not provided him with a copy of that advice.
33. He believed that there was therefore no power, or justification, for the Trustee to switch the CETV calculation basis for the Moody Section to the basis used for the remainder of the AXA Scheme. Instead, this section should have retained at least the previous CETV basis in accordance with the terms of the Deed.
34. He also noted the Trustee’s stated approach that:

“The Trustee sets the terms for converting benefits in respect of member options on the basis of actuarial advice with the view to avoiding stress on the Scheme’s finances as far as is reasonably possible without disadvantaging members”.
35. He maintained that no stress on the AXA Scheme’s finances would be introduced by maintaining the CETV basis for the Moody Section. Indeed, the contrary appeared to be the case, the Trustee would create a benefit to the AXA Scheme by disadvantaging members if it did not adopt a Section specific CETV calculation basis.
36. Clause 5.2 of the Deed states:

“By way of the New AXA Scheme Section, the AXA Scheme will provide benefits which are the same as those that would otherwise have been provided under the Transferring Scheme.
37. Clause 17.1 states:

“The provisions of this deed shall have overriding effect and, to the extent that any of the provisions in this deed are inconsistent with the terms of the AXA Scheme Rules or the provisions of the Transferring Scheme Rules, the provisions of this deed shall prevail”.
38. Mr G maintained that if the provisions of the Deed prevailed; this must mean that the Trustee had agreed to maintain benefits which were the same as those under the Moody Scheme, which included CETV calculations.
39. He did not understand the rationale for establishing a separate section if it was not to mirror benefits in their entirety, that is to replicate benefits.
40. He believed that the AXA Scheme’s CETV basis did not lead to a reasonable “Best Estimate” of the value of a deferred member’s benefits, and therefore needed to be replaced with a more realistic basis.

41. He also noted that pensioner liabilities were insured (swapped). He said this was inconsistent with a CETV discount rate of swaps plus 2.7% for the deferred member's lifetime. The discount rate should reflect the deferred member's age in as much as different rates should be applied pre- and post-retirement (in line with the term dependent approach for the allowance for expected future investment returns);
42. The AXA Scheme liabilities were 55% deferred members (with no stated split between pre- and post-retirement liabilities) compared to the stated policy of having 45% of the assets in return seeking (or equivalent) asset classes. This too supported the use of a different discount rate pre- and post-retirement;
43. As the Moody Scheme was relatively small, he could see the argument for a sweeping assumption as to the use of a single discount rate. However, given the amount of CETVs paid, as reported by the Trustee, he believed that such an assumption was inappropriate and unjustified as it disadvantaged certain members disproportionately;
44. He said that no allowance was made for transfers out from deferred pensioner status. This suggested that the Trustee did not expect to make a "profit" from such transactions, within the limits of materiality. Yet the best estimate basis (used for CETV calculations) was materially lower than the Technical Provisions basis.
45. On 19 March 2018, Mr G submitted a complaint under Stage 1 of the AXA Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said:-
 - The Announcement did not make it clear that the CETV calculation basis used in the AXA Scheme differed from the CETV basis used in the Moody Scheme and could result in lower CETV quotes post-merger.
 - The use of the AXA Scheme's CETV calculation basis post-merger was not consistent with the Deed or with the Announcement.
 - He wanted the Trustee to adopt a CETV calculation basis for the Moody Section that was at least as prudent, and which produced CETVs which were at least as high, as the pre-merger Moody Scheme CETV calculation basis.
46. The Trustee responded on 20 April 2018. It rejected his complaint and said that:
 - It did not agree that the Announcement was misleading or that it conferred members with a right to a particular CETV calculation basis or a CETV quote of a particular amount.
 - A statement in the Announcement that "the rights and options attaching to your benefits" would be the same post-merger should be taken to mean that Mr G retained the right to request a statement of entitlement and the Trustee's obligation under Section 93A of the Pensions Schemes Act 1993 (**PA93**) was to provide a statement of entitlement within a specified period.

- Mr G's benefit entitlement under the Moody Scheme and subsequently under the AXA Scheme was to a pension and not to a specific CETV amount or calculation basis.
- The AXA Scheme's CETV calculation basis was adopted on the basis of professional actuarial advice provided by the Trustee's actuarial advisers.
- The guarantee period for his February 2016 CETV quote had expired several months before the merger and was therefore not capable of acceptance at the time of the merger.
- It did not consider that a statement in the Announcement that "you do not need to take any action as a result of this Notice" was misleading as the merger of the Moody Scheme into the AXA Scheme did not require any action on the part of Moody Scheme members.
- The Announcement did not give Mr G any right to benefits. It expressly stated that: "This announcement confers no rights to benefits. Rights to benefits are conferred in accordance with the terms and conditions of the trust deed and rules of the WS Moody Scheme and, after the transfer, the AXA Scheme, as amended, and, where applicable, the transfer agreement which sets out the terms and conditions of the transfer from the WS Moody Scheme to the AXA Scheme".

47. On 26 July 2018, Mr G escalated his complaint to Stage 2 of the IDR.

48. The Trustee responded on 14 September 2018 to confirm that it upheld the Stage 1 decision.

49. On 13 September 2018, the Trustee provided Mr G with a further CETV quote on the AXA Scheme basis at the time. The figure quoted was £76,814. As a gesture of goodwill, the Trustee agreed to provide this quote free of charge.

50. Mr G decided not to take a transfer from the AXA Scheme and on 20 February 2019, he asked for his pension to be put into payment.

The Trustee's position

51. Mr G's pension was put into payment on 8 April 2019. He was not at any time while a deferred member of the AXA Scheme entitled to a CETV on the calculation basis used by the Moody Scheme.

52. The CETV calculation provided to Mr G in November 2017 was based on actuarial advice following the 2015 valuation of the AXA Scheme, that is prior to the merger date. This basis was updated monthly to allow for government bond yields and expected future inflation. The Moody Scheme CETV basis was determined by a different trustee on the basis of advice from a different actuary, so it is to be expected that the two would differ. The CETV quotes reflect an estimate by the Trustee of the cost of providing benefits under the AXA Scheme.

53. A CETV is a figure that is inherently subject to fluctuations over time. The Trustee acknowledges Mr G's disappointment at the changes to the CETV quoted to him before and after the merger but notes that a CETV will be calculated differently under each scheme and does not agree that Mr G has suffered any loss as a result.
54. Mr G has sought to apply the Moody Scheme CETV basis from February 2016 to the CETV quote received from the AXA Scheme in September 2018 in order to estimate the loss he says he has suffered. The Trustee rejects this argument as it is clearly not reasonable or appropriate to apply such an analysis. The CETV quote in September 2018 was available to Mr G at the time had he wished to use it to access pension freedoms and he chose not to take it.
55. The Trustee does not agree that there has been any failure to undertake reasonable and appropriate due diligence in relation to the merger. It took appropriate actuarial advice and notes that the Moody Scheme was very small in relation to the AXA Scheme and consequently did not materially affect the AXA Scheme's investment strategy or funding level.
56. It does not agree that communications to members in relation to the merger were misleading and that wording referring to "mirror benefits" does not include a right to mirror the CETV basis.
57. The Trustee accepts that Mr G's IDRPs complaint was of a technical nature. While it did not grant Mr G's request to attend the Trustee meeting at which his complaint was considered, this is in accordance with the AXA Scheme's IDRPs which does not include an option for oral hearings.
58. The seven principles of public life referred to by Mr G apply to the holders of public office and are not directly relevant to the Trustee. However, the Trustee considers it has adopted an appropriate and proportionate response to Mr G's complaint.

Mr G's position

59. It would have been fair and proportionate for the Trustee to protect the CETV calculation basis for members of the Moody Section. It failed to do this.
60. The Trustee adopted the CETV calculation basis, both for the Moody Section and for the AXA Scheme as a whole, without taking sufficiently detailed actuarial advice and failed to give due consideration to the effect on members, in contradiction to its own stated policies.
61. The failures of the Trustee (and possibly the Moody Trustees) have had the effect of denying him his "Pension Freedom". But for these failures, he would have received a (non-detrimental) CETV of £99,858, which he would have taken. Consequently, he assesses his financial loss at £23,044.
62. As the Trustee states, the CETV quotes after the merger were on the AXA Scheme CETV methodology. This is the crux of his complaint that the previous Moody Scheme basis should have been protected.

63. The Trustee's opinion is that he has not suffered any financial loss. This is also the crux of his complaint as he considers he has suffered a quantifiable financial loss.
64. The Trustee states that he chose not to take a transfer, but this was in effect a "Hobson's choice" as the CETV was such poor value-for-money, as to be no realistic option. The effect was that he was denied his Pension Freedom.
65. The Trustee again states that the decision to merge the schemes was taken by the Moody Trustees and Employer. This contradicts the Announcement which states, at its opening sentence: "Following a review by AXA UK plc of the various closed pension schemes....". Not only that, but the Moody Trustees and Employer would not have had power to make such a decision unilaterally.
66. The Trustee states that it took appropriate actuarial advice. It could have demonstrated this easily by providing evidence at a confidential oral hearing. He asks that it be invited to do so at an oral hearing with the Pensions Ombudsman (**the PO**).
67. The Trustee acknowledges that the Moody Scheme was very small relative to the AXA Scheme. He believes this is strongly indicative that proper due diligence was not undertaken.
68. The Trustee's refusal to provide evidence to support their assertions is further reinforcement of his concerns over its failures.
69. The Trustee quotes from the PO's Determination in the case of Professor M (PO-13938) regarding his "statutory jurisdiction to direct the Trustee on the appropriateness of actuarial factors and assumptions that should be used to calculate transfer values". Again, this suggests that the Trustee has not understood his complaint. He is not disputing that point. His complaint is over the Trustee's failures in the processes that it went through in: (a) the merger; and (b) the taking and due consideration of advice in respect of the merger and in the setting of CETV assumptions.
70. He notes the Trustee now acknowledges that AXA did indeed instigate the review. and that the merger was at AXA's request.
71. In agreeing to the request, the Trustee states that it gave full consideration to the interests of the scheme members. By its own admission, it failed to give any consideration whatsoever to the interests of the Moody Scheme members (whose liabilities it was asked to take on). It would have been fair and proportionate to maintain the previous CETV basis for these members within the terms of a "no worse off" merger, undertaken at the employer's request
72. The Trustee now acknowledges that the costs of running the schemes were "highly relevant to the review...." It states that the merger was not undertaken in the interests of the employer. In which case, in whose interests was the Merger undertaken?
73. The Trustee states that it has not looked into the decision-making process of the Moody Trustees. He questions this, on two grounds: (a) how can the Trustee know

what was intended by the Moody Trustees, without any research; and (b) if it was the Moody Trustees' failure to ensure the Deed fully reflected the 'no worse off' provisions that they intended, then the Trustee has now assumed this responsibility through the Merger.

74. The Trustee's position is that it took actuarial advice and gave it full consideration, both of which I complaint. However, it acknowledges that the Moody Scheme was very small relative to the AXA Scheme. This indicates/supports his belief that no full and proper advice was taken and/or that any (incidental) advice was not properly considered.
75. The Trustee makes a new point about the AXA Scheme's investment strategy. However, its statement is at odds with: (a) the scheme's Statement of Investment Principles – Defined Benefit Section – May 2017; and (b) its Letter to Pensioners (January 2020) (a category of member that includes Mr G. These state: (i) "The investment strategy takes due account of the maturity profile (in terms of relative proportions of liabilities in respect of pensioners and active members); and " (ii). "The ...Trustee is delighted to announce that it has taken an important step to provide enhanced security for members. The AXA Scheme has entered into a longevity swap ... to protect £550m of pension liabilities It covers pensioners who retired between 1 January 2015 and 31 March 2019, building upon the previous swap undertaken in 2015."
76. On the subject of CETV calculation bases, he maintains that the use of a dual discount rate approach offers a 'fairer' CETV basis. One aspect of his Complaint is that the Trustee has not given proper consideration to the effect of adopting a single discount rate approach (swaps + 2.7% in this case), flying in the face of its own stated principles and the guidance from the Pensions Regulator. The main issue of his Complaint relates to the change of basis consequent upon the Merger, where the Moody Scheme previously used a discount rate of Gilts + 1.0%.
77. The Trustee confirms that a "best estimate" valuation was carried out. It refuses to disclose the results. Yet, the Moody Scheme disclosed such results in its Valuation Reports. It appears that the refusal to disclose the results is simply because the Trustee does not wish its failures in the decision making process to be scrutinised.
78. Moreover the Trustee now recognises that the CETV is "an estimate", as opposed to its previous assertion that it was a "best estimate". A significant change. This further reinforces his belief that the Trustee did not give the subject of the transfer value basis full and proper consideration.
79. The Trustee has now disclosed the composition of the scheme's IDR Committee – an Employer Nominated Trustee and the Independent Trustee. Surely it should appoint an MNT to such a Committee to give a balance. How can an objective review be carried out – and be seen to be carried out – by such a composition of this committee.

80. The Trustee also refers to his citing the seven principles of public life. The AXA Trustee then goes on effectively to dismiss these, referring instead to TPO's Decision in the case of Professor M. Mr G appreciates that these seven principles are not directly applicable. Nevertheless, as trustees have a duty to act in members' interests, he believes these principles are a relevant and appropriate benchmark against which to judge trustee actions and behaviours. The Trustee's actions and behaviours do not meet this benchmark.
81. The Trustee refuses to provide evidence of its due diligence in any or all respects. How can it claim to have taken decisions in an open and transparent manner when it refuses to disclose any documents, even to allow him to have confidential sight of them.
82. The Trustee makes a number of points about the redress that he seeks. The AXA Scheme assessed the value of his benefits at £76,814 in September 2018, on the detrimental CETV basis. But for the Trustee's failures, he believes the CETV on offer would have been £99,858 which he would have taken. There is therefore a detriment of £23,044. He recognises that it is impossible to assess definitively, in advance, the precise current value of the detriment that he has suffered now in the short term and the loss of value to his beneficiaries in the longer term. Nevertheless, effectively he has been denied his Pension Freedom and it is fair and proportionate to assess the financial loss at £23,044. The fact that he has started to draw his pension is immaterial.
83. Mr G says that now the Trustee has all but acknowledged that the merger was undertaken in the interest of the Employer, he can summarise his complaint as being that but for the Merger, he would have been offered a CETV calculated on the Moody Scheme basis, which he would have accepted. The Trustee failed in its fiduciary duty to act in members' interests.
84. The Trustee also failed to allow him to present his case in person and it failed to give the complaint full and proper consideration. It did not undertake an objective review. Borrowing from the seven principles of public life, the Trustee:
- failed to take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias;
 - failed to submit themselves to scrutiny; and
 - failed to take decisions in an open and transparent manner, withholding information from members without clear and lawful reason thereby leading to the conclusion that the Trustee failed to take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Adjudicator's Opinion

85. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised in paragraphs 86 to 102 below:-
86. Mr G had requested an Oral Hearing before the PO. He said his complaint involved complex issues that the Trustee did not appear to grasp fully. This would also give the Trustee an opportunity to present evidence, in confidence, to support its assertions.
87. The Adjudicator explained that Oral Hearings were rarely held as the PO usually dealt with everything, very effectively, in writing or on the telephone. Circumstances in which one might be considered were:-
- Where there were differing accounts of a particular event and the credibility of witnesses needed to be tested.
 - Where the integrity or honesty of one of the parties had been questioned, and that person had asked for an oral hearing.
 - Where there was a complaint about basic facts that could not be uncovered by the investigation on the papers.

The Adjudicator believed none of those criteria applied in Mr G's case and considered it unlikely that the PO would agree to Mr G's request for an Oral Hearing.

88. Mr G had made a number of allegations regarding the way in which the Trustee and the WS Moody Scheme Trustee went about the merger of the two schemes and the effect that the merger had on his benefits. This appeared to be as a direct result of the fact his CETV decreased between the value quoted in February 2016 and that quoted in October 2017.
89. He had said that but for the merger he would have been offered a CETV calculated on the WS Moody Scheme basis, which he would have accepted. As a result the Trustee had failed in its duty to act in the members' best interests.
90. He had said that effectively he had been denied his pension freedom, something that the Adjudicator disagreed with.
91. The Adjudicator's view was that the CETV was broadly the cost, assessed by the Trustee on advice from the Scheme actuary, of purchasing the member's pension benefits if they were to be transferred to another scheme. The Trustee had a responsibility to provide a CETV quotation so that the member could then seek advice and approach the potential receiving scheme for an illustration of the benefits he might obtain were he to transfer. It was then for the member to decide whether it was in his best interests to transfer or not; there was no guarantee that it would always be so.

92. The onus fell on Mr G to provide sufficient evidence to demonstrate that what he had said was correct. In the Adjudicator's view, there was nothing to suggest the decision to merge the WS Moody Scheme with the AXA Scheme had impacted on Mr G's pension benefits within the Scheme. These remained the same. So, apart from his own views on the merger, there was no clear evidence to support Mr G's position.
93. In the Adjudicator's opinion, because the merger of the WS Moody Scheme and the AXA Scheme had no impact on the benefits provided to members there was no requirement for the Trustee to obtain member approval to the merger. The Trustee was required to inform the membership and the Adjudicator considered that it had done so by means of the Announcement.
94. Mr G had referred to the wording of the Announcement which stated that the benefits provided under the AXA Scheme would be the same as those provided under the WS Moody Scheme. In the Adjudicator's opinion this statement referred to the benefits payable under the AXA Scheme and did not include the value that was placed on the benefits in the event the member looked to transfer his benefits out of the scheme.
95. A CETV is calculated in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996 (the **1996 Regulations**). Regulation 7A (2) provides that a CETV is the best estimate of the amount at the guarantee date which is required to make provision within the scheme for a member's accrued benefits, options and discretionary benefits.
96. Mr G argued that it was unfair that the CETV quoted in August 2017 was less than that previously quoted in March 2016. The Adjudicator had seen no clear evidence which substantiated what Mr G had said, such as a report from an independent actuary.
97. The CETV basis was intended to provide a value that broadly represented a fair market value of the pension benefits being given up within the AXA Scheme. In arriving at that value, the Trustee had a duty to take into account the financial interests of all members, including members who continued to remain in the scheme.
98. The CETV basis was set by the Trustee after obtaining advice from the AXA Scheme actuary. It was to be expected that the CETV basis would vary from scheme to scheme and that the basis for any scheme would change over time. The Trustee had a duty to review the CETV basis having regard to its investment strategy, facts about the past and opinions about the future based on those facts. Therefore, it was not maladministration for the Trustee to have reviewed and changed the CETV basis.
99. The original Moody Scheme CETV was guaranteed until May 2016 and Mr G had not exercised his right to transfer within the guaranteed period. So the Trustee was not under a statutory obligation to effect the transfer on that basis.
100. The Adjudicator was satisfied that the Trustee had acted correctly in accordance with legislative requirements. The Trustee was legally required to monitor and review the appropriateness of the actuarial assumptions and actuarial factors used in the

calculation of transfer values. Mr G's CETV of £65,409 had been calculated correctly by the Trustee, in August 2017, in accordance with the CETV assumptions in place for the AXA Scheme at that time.

101. Mr G had also made a number of detailed observations about the CETV basis. The Adjudicator considered it was a matter for the Trustee to decide, based on the Actuary's advice and recommendation, how transfer values should be calculated. The actuarial profession is regulated by the Institute and Faculty of Actuaries; it is not within the remit of The Pensions Ombudsman to direct the Actuary on the appropriateness of actuarial factors and assumptions that should be used to calculate transfer values.
102. In conclusion, it was the Adjudicator's opinion that there was no basis on which Mr G's CETV could legitimately be recalculated using the CETV assumptions for the WS Moody Scheme following its merger with the AXA Scheme.
103. The Trustee accepted the Adjudicator's Opinion whereas Mr G did not and the complaint was passed to me to consider. Mr G has provided further comments which were extensive so only the main points have been provided in paragraphs 104 to 111 below. I have however considered all the issues raised in Mr G's submission. which do not change the outcome. I agree with the Adjudicator's Opinion.
104. Mr G contends that:-
- The merger was undertaken in the interests of the employer / the parent company.
 - His CETV would have been higher under the Moody Scheme calculation basis (compared to the AXA Scheme basis).
 - The Trustee did not consider the question of the CETV calculation basis in the transfer; and failed to take advice on the change of basis.
 - The Trustee could have provided a 'no worse off' provision in the Moody Section of the AXA Scheme. This would have been fair and proportionate given the weaker funding position of the AXA Scheme.
105. The Trustee could easily have settled his complaint by providing evidence of its actions and the advice it had received. It has consistently declined to do so. The IDRPs were not objective and amounted to dogged maintenance of the Trustee's original position.
106. He believes that in his case, the Trustee failed to meet the necessary standards in proceeding with the merger and that it failed to meet such standards in communicating accurately the potential need for a radical rethink.
107. He says he is still not clear as to the extent by which the strength of the Employer Covenant was improved, if at all, as a result of the merger. The Trustee has failed to explain or to provide a corporate structure chart to support its assertion. What is clear is that the Moody Scheme was more securely funded pre-merger than post-merger.

108. The only reason that his CETV decreased, was due to the Trustee's failures. But for its failures, the CETV would have increased materially. He had two deferred benefits under two DB schemes, for which he had previously obtained CETV estimates. A non-material increase (out of line with the 30% increase in the other scheme) would also have led him to question the calculation basis.
109. The Trustee has provided no clear evidence to substantiate what it has said about taking advice and giving the matter full and careful consideration. Instead, there are inconsistencies and contradictions in its version of events. These give the impression that it is attempting to justify its actions in retrospect.
110. He does not dispute that the transfer value was calculated on the general AXA Scheme factors at the time. However, he maintains that the Trustee failed to protect his interests in applying the AXA Scheme basis to the Moody section. Moreover, the AXA Scheme basis conflicts with TPR Guidance and the Trustee's own stated principles.
111. Contrary to the Announcement wording, the benefits were not mirrored in the receiving scheme, as evidenced by the change in CETV calculation basis.

Ombudsman's decision

112. Mr G has requested I grant him an oral hearing because his dispute raises complex issues, and because this will give the Trustee an opportunity to present evidence in confidence to support its assertions. The Adjudicator explained in his Opinion that oral hearings are rarely held. However, the decision about whether an oral hearing is required is for me to take, and so I have deal with Mr G's request below.
113. The purpose of an oral hearing is to assist me in reaching my Determination. Circumstances in which a hearing may be appropriate include (i) where there are differing accounts of a particular event and the accounts or credibility of witnesses need to be tested; (ii) where the honesty or integrity of a party has been questioned; or (iii) where there are disputed key facts which cannot be resolved from the papers uncovered by the investigation on their own.
114. In part, Mr G's request for an oral hearing is because he believes confidential actuarial advice can be provided during such a hearing and because he wants to have the opportunity to explain issues which he feels are complex and need to be aired in person.
115. There are circumstances where I may ask to see the actuarial reports, or parts of them, but this does not necessitate holding a hearing.
116. Further, Mr G's complaint does not raise any issues which would normally mean I should consider holding an oral hearing, for example to test the credibility of the evidence to reach a finding on the facts.

117. I do not consider that any of the circumstances set out in paragraph 113 above apply here nor do I consider that it is necessary to hold a hearing in this case for any other reason.

118. Essentially, Mr G's complaint raises two issues:-

(i) What were his rights post-merger?

(ii) Did the AXA Scheme provide CETVs on a 'best estimate' basis, as required by law and regulatory guidance?

119. In *Edge v Pensions Ombudsman [1999] EWCA Civ 2013* the Court decided that the Pensions Ombudsman cannot investigate class action cases where the success of one set of members' claims would have an adverse impact on another group of members. Consequently, I can only focus on whether Mr G has suffered injustice and I cannot look at the wider issues affecting the membership.

120. Accordingly, I have not considered wider questions such as whether the Trustee is providing 'best estimate' to the membership generally as this would likely fall into that category. Moreover, it does not affect Mr G because he has chosen to take his pension.

121. A member's right to a statutory transfer right is governed by Part 4ZA of the Pension Schemes Act 1993 (**the Act**). I have summarised below the statutory and regulatory guidance relating to the right to a CETV and the basis on which it is calculated. The Trustee has referred to the statutory framework and Mr G has referred to TPR's guidance.

122. Part 4ZA contains sections 93 to 101 which set out trustees' statutory requirements in relation to transfers. Broadly, this requires:

- Section 93A sets out the right to a statement of entitlement (i.e. the guaranteed CETV). As long as the member meets the criteria set out in section 93, section 93A requires trustees to provide the member with a statement of entitlement in respect of their transferable rights.
- Trustees are required to provide the guaranteed CETV within three months of the member's application, save where they are unable to do so, for reasons beyond their control, they may take up to a further three months, as required (Regulation 6(1) of the 1996 Regulations).
- Regulation 6(2) of the 1996 Regulations states that the guarantee date must be within the period of ten days (excluding weekends and certain key holidays) before the date on which the statement of entitlement is provided to the member.
- Section 94 provides that a member who has been provided with a statement of entitlement under section 93A with a right to take that cash equivalent in accordance with the remainder of Part 4ZA.

- Section 95 details how an application to take the cash equivalent must be made, the relevant timeframe being three months beginning with the guarantee date, and the ways in which the right to a cash equivalent can be taken, for example, for acquiring rights allowed under the rules of a personal pension scheme.
- The calculation of cash equivalents must be carried out in accordance with section 97 of the Act and the general requirements of Part III of the 1996 Regulations.

123. As well as the calculation requirements set out in the Act and the 1996 Regulations, TPR also provides guidance for Trustees. The guidance explains the legal framework relevant to the transfer of defined benefits as follows:-

- A CETV represents the expected cost of providing the member's benefits within the scheme, which in the case of defined benefits, is a value determined on actuarial principles, which requires assumptions to be made about the future course of events affecting the scheme and the member's benefits.
- There are two methods for calculating CETVs provided by the legislation:
 - (i) a method based on a 'best estimate' of the expected cost of providing the member's benefits in the scheme; and
 - (ii) an alternative method where trustees want to pay CETVs which are above the minimum amount.
- The legislation establishes a framework which provides for the calculation of an 'initial cash equivalent' (**ICE**) which is then adjusted, if necessary, to arrive at the final CETV available to the member to transfer. The ICE must place a value on the member's accrued benefits together with any options and discretionary benefits that the trustees decide should be included.
- Under the 'best estimate' method, assumptions must be chosen with the aim of leading to a best estimate of the ICE. This is a best estimate of the amount of money needed at the effective date of the calculation which, if invested by the scheme, would be just sufficient to provide the benefits.
- 'Best estimate' is not a precise concept, and trustees will often need to be pragmatic and accept choices which seem to them reasonable in the light of the information and advice they have obtained.
- When deciding on the assumptions (economic, financial and demographic, having regard to the scheme's investment strategy) to achieve this best estimate, and to put them in a position to make informed decisions, trustees must seek advice from their actuary.
- Trustees should make evidence-based objective decisions in relation to matters that will have a material effect. Evidence is facts about the past, and opinions about the future based on those facts, which can be objectively used by the trustees to make judgements about the likely course of future events.

- Trustees should monitor and review the appropriateness of the assumptions underlying the calculation of the ICE. It would be reasonable for trustees always to review assumptions at the same time as a scheme funding valuation. Although, reviews between valuations should be considered where the ICE is no longer within a reasonable margin of materiality of a best estimate. Trustees should instruct their actuary to alert them when this appears likely to be the case. Circumstances which may justify an inter-valuation review include:
 - a significant change in investment policy;
 - a change in policy regarding the exercise of discretions;
 - becoming aware of significant experience differences in respect of demographic assumptions; and
 - when new standard mortality tables are published or other mortality information released.
- Trustees should continue to monitor whether the assumptions remain appropriate in changing market conditions.

124. Taking these requirements into account, I consider Mr G's belief that he has suffered financial loss as a result of the change in the CETV basis is misconceived.

125. He claims financial loss of £23,044. He says this is the value that he has 'personally' placed on the loss of his 'pension freedoms', because the CETVs provided by the AXA Scheme post-merger were inadequate such that he felt he had little option but to remain in the AXA Scheme, such that it was tantamount to losing his pension freedoms.

126. He has reached the above figure by estimating what he believes his CETV would have been had it been calculated using what he considers to be the Moody Scheme basis. He has assumed that his CETV would have been 30% higher than the CETV he was offered in 2018 by the AXA Scheme. He has assumed this uplift based on his experience of obtaining a CETV (which he says he accepted) from a different DB scheme of which he was a deferred member. He has then deducted from this uplifted amount, which he calculated as £99,858, and which he says he would have accepted, the amount he was offered in 2018 (£76,814).

127. However, Mr G himself has acknowledged that it is impossible to know whether he would have been better off by taking the CETV or the pension. Therein lies the problem with his claim that he has suffered financial injustice (to the extent that there was any breach of law by the Trustee in any event).

128. CETVs fluctuate (which Mr G appears to accept), and schemes can adjust the assumptions upon which they are calculated. This means there is no guarantee that the basis on which the 2016 CETV was calculated would endure had the Moody Scheme continued to exist, or within a segregated section for Moody Scheme members following an identical investment strategy and applying the same

assumptions at the time of merger. I do not think 'it is beyond reasonable doubt', as Mr G claims, that he would have received a higher CETV in those circumstances. Of course, the civil standard of proof is on the balance of probabilities, but Mr G has not provided a reliable basis for assessing what his CETV is likely to have been in either of these cases.

129. A further problem with Mr G's financial loss claim is that, although he has said that he would have invested the money in his SIPP, he has provided no evidence about how the SIPP has performed. He acknowledges that in order to determine whether he would have been better off taking a CETV or a pension, investment returns in the SIPP need to be taken into account.
130. What is clear is that Mr G is drawing his pension from the AXA Scheme, the value of which he does not appear to suggest has been undermined by the transfer. He is, in accordance with the announcements made to him, receiving the same benefit he would have received in the Moody Scheme.
131. Ultimately, even if I could find wrong doing on the part of the Trustee, I do not consider that Mr G has established that he has suffered any financial loss let alone in the amount he claims, as the basis of his calculation is fallacious.
132. I also do not find that Mr G has been able to demonstrate on the balance of probabilities that he would have transferred his pension to his SIPP, or at what point.
133. He chose not to transfer in 2016 when he was quoted £73,374 by the Moody Scheme. The guarantee period of his 2016 CETV ran out in May 2016. It is not clear why Mr G chose not to transfer out of the Moody Scheme at the time; possibly he was merely making a speculative request for a transfer value. If he genuinely was interested in transferring, it would appear that the sum he was offered, even though it now seems he believes it was based on more generous assumptions, was not acceptable and so he allowed the guarantee period to lapse.
134. While it is not clear when discussions about the merger began, Mr G's CETV case was not a 'live' one at the time of the announcement of the merger, the guarantee period having ended some four months previously, with Mr G not taking it.
135. I note that in his response to the Adjudicator's Opinion, Mr G appears to have backtracked somewhat from his claim for compensation for financial loss on the basis that he agrees that it may be 'difficult to quantify', though he still appears to suggest that I could manufacture a figure to acknowledge that there has been unquantifiable financial loss. This is contradictory. Either he can provide evidence of quantifiable financial loss, not based on guesswork, or he cannot. It seems to me that he cannot.
136. He also now appears to be asking me to award significant compensation for non-financial loss – stress and inconvenience caused by the alleged failures of the Trustee. However, it seems to me that this claim, in part at least, is an attempt to get over the difficulties of proving he has suffered financial loss, which, for the reasons given above, I do not think he has achieved. In which case, I do not consider an

award for non-financial injustice would be appropriate if it is simply to overcome the fact that he cannot establish a financial loss claim.

137. Some of Mr G's claim that he has suffered injustice relates to the way he alleges his complaint has been handled – the IDR process and the Trustee's refusal to provide evidence, namely confidential actuarial advice, to prove that: (a) it was given; and (b) that it supports the Trustee's representations.

138. However, as the entire basis of the complaint is fundamentally flawed, I consider it is unreasonable to put the Trustee to any further proof in these circumstances. Ultimately, it appears to me that the Trustee of the Moody Scheme provided the information it was required to issue prior to the merger; and did not provide any guarantee, as Mr G suggests, that the CETV calculation basis would remain the same. Similarly, the Trustee is calculating CETVs properly and in accordance with legal requirements in the Scheme. That does not give grounds for a successful claim by Mr G.

139. Mr G cites the case of *Bagniet v Capita*, because of the 'but for' principle contained within it. I do not believe the case adds anything to the discussion here, because he has not established that there has been a failure by either set of trustees to do something that was required, and that failure has led to loss being suffered by him.

140. Mr G's complaint also raises concerns about the acts/omissions of the SBJ Group in its role as Trustee of the Moody Scheme. His argument is that it failed to act in the best interests of members, for example, by not taking advice about the different basis of CETV calculation used by the AXA Scheme. It may be that the Deed indemnifies the transferring scheme so that the liability could sit with the Trustee, however the fact that the SBJ Group is now dissolved makes any investigation into its actions impossible.

141. Mr G claims the Announcement was misleading and the terms of the Deed have been breached. In particular, the Announcement stated:-

- The benefits secured under the Moody Scheme will transfer to the AXA Scheme at the merger date and members do not need to take any action.
- The benefits to be provided to and in respect of members will be the same in the AXA Scheme as they were in the Moody Scheme, as will the rights and options attaching to members' benefits. Benefits will be of equal value immediately after the transfer compared to the position immediately before the transfer.

142. Clause 5.2 of the Deed, as quoted by Mr G. says the same.

143. Mr G has also relied on statements in a 2017 AXA Scheme Trustee's Report and actuarial certificate which mention the replication/mirroring of member benefits in the receiving scheme.

144. Mr G argues that because the AXA Scheme operates a different basis of calculation of CETVs, which, at least in his case, has resulted in a lower CETV offer, benefits

and/or rights and options attaching to members' benefits/options are not the same post merger, contrary to the Announcement and the Deed.

145. I note the TPR guidance on transfer values says as follows:

Options

12. Most defined benefit schemes give members some benefit options, usually at retirement, other than the 'standard' benefits. For the purpose of calculating CETVs, an option is something which can be exercised by the member without needing anyone else's consent (trustees or employer). Common options are:

- to exchange some pension for a lump sum at retirement;
- to begin taking pension earlier or later than normal pension age (which might be subject to a reduction or an increase, respectively, in the amount of pension);
- to give up some pension in exchange for a higher dependant's pension on death.

13. Only those options which would increase the value of benefits may be included within the benefit for cash equivalent purposes under the best estimate method.”

146. I do not consider the statutory right to transfer to be an 'option' within the meaning of the above, which also seems to me to be more consistent with how the term 'option' is used in the Announcement, which talks about the benefits to be provided in the receiving scheme.

147. The right to request a CETV is unchanged by the merger because it is a statutory right. I note the TPR guidance states as follows in the context of 'presentation' of CETV quotes:

“ It would be good practice for trustees to make available reasonable details of the scheme's relevant transfer value basis (including the underlying assumptions used and the treatment of options and discretionary benefits) on request from a member or a member's financial adviser.”

148. Mr G makes clear in his submissions that he had been in correspondence with the AXA Scheme actuary to understand the difference in the two CETV bases. The further details he has provided about the underlying assumptions used in each show that the actuary has been prepared to answer several of his questions. Consequently, I find that through the answers that the actuary provided, the Trustee has made available 'reasonable details' and there is no requirement on it to go any further.

149. Furthermore, it is not the case that Mr G had an 'open' CETV at the time of the announcement of the merger, and he would not have been able to request another as of right and for free before the merger. Had he still been within the guarantee period, there might have been an argument for informing him when the announcement was made, that the CETV calculation basis would be different under the AXA Scheme.

150. Mr G also refers to Statements of Entitlement (the **Statements**) issued by the Moody Scheme trustee, rather than the Respondent. Mr G relies on explanations in the Statements that the transfer value is based on age and investment conditions at the time of the transfer and that transfer values can go up and down as these factors change. However, he says the Statements did not mention any change in calculation methodology affecting transfer values.
151. By implication he seems to be saying that the Trustee is unable to change the transfer value calculation assumptions, which cannot be the case because changes in underlying factors such as investment conditions and the age profile of members will affect the calculation methodology adopted by the Trustee upon the advice of its actuary.
152. Mr G says it would have been fair and proportionate for Moody Scheme members to have their calculation basis ringfenced and preserved, particularly as a separate section of the Moody Scheme was created.
153. This is simply Mr G's opinion of what is fair and proportionate. As benefits rights and options were explicitly carried over to the AXA Scheme, the full extent of members' entitlements under the Moody Scheme appears to have been protected.
154. Mr G alleges the Trustee failed to carry out proper due diligence, including obtaining appropriate actuarial advice before proceeding with the merger. But the mere fact that the Trustee could not immediately locate information about the Moody Scheme, some two years after the merger, is not evidence that there was a lack of due diligence on the part of the Moody Scheme trustee. This is a weak argument. Neither is the relative size of the schemes an indication that proper due diligence was not undertaken or that no advice was taken in relation to the merger.
155. The Trustee's refusal to disclose confidential actuarial advice is not evidence that none was taken. The Trustee is required to comply with relevant legislation when valuing the Scheme and setting actuarial factors, including for transfer values, which need to be appropriate and up to date.
156. Mr G has more recently claimed his case is analogous to those of the Women Against State Pension Inequality (**WASPI**). However, it is clear that the Moody Scheme members' right to a pension at a particular age did not change as a result of the merger. Therefore, Mr G was not forced to rethink his retirement planning in the same way that he says the WASPI women were. There is no analogy here, even if I were to accept that CETVs were likely to be less generous post transfer for all Moody Scheme members, about which there is no evidence in any event. Fundamentally, former Moody Scheme members' pensions were unchanged and could be taken as before. Further, the statutory right to transfer was unaffected.
157. Mr G argues the merger was a cost saving exercise. Even if this is true, this is not an illegitimate factor to be considered for a merger, particularly where members' pensions are unaffected, as is the case here.

158. Mr G has raised a concern about the Employer Covenant, but while he says:

- the AXA Scheme is less well-funded than the Moody Scheme;
- the asset allocation was, in his opinion, more prudent; and
- he has provided evidence of statements made that the covenant has some limiting features

no issue has arisen in which the financial support of the sponsoring AXA UK plc, has been tested and found wanting. Mr G says the parties to the merger were subsidiaries of AXA UK plc in which case, it seems to me, the Employer Covenant could be said to be the same.

159. The Announcement stated:

“Moreover, the security of your benefits will be enhanced by a strong employer, AXA UK plc, being primarily responsible for the funding of the AXA Scheme.”

160. There is insufficient information about the employer’s organisational structure to be able to conclude whether this is an accurate statement, but regardless, I do not find it has any relevance to Mr G’s complaint to merit further investigation. There is no evidence that members’ security has weakened, so as to warrant a strengthening of CETV valuations, as he suggests.

161. I find that Mr G has no basis for claiming that the AXA Scheme’s calculation methodology for transfers does not provide a ‘best estimate’ and that it does not comply with TPR guidance.

162. As I say in paragraph 148 above, it appears Mr G has been provided with some information by the AXA Scheme’s actuary, through Capita, about the assumptions used by the AXA Scheme. Mr G has concluded that the discount rate assumption used by the AXA Scheme does not represent best estimate; is less fair, less prudent and therefore weaker than that previously used by the Moody scheme, and that it is inconsistent with the AXA Scheme’s investment strategy in relation to pensioner liabilities (about which Mr G has said the Trustee has been inconsistent in what it has said). He also says actuarial evidence would demonstrate that the majority of members would be disadvantaged by the single discount rate assumption.

163. However, I note the Trustee says the Moody Scheme operated a single discount rate from 2015 to the time of the merger and not a dual rate as Mr G alleges, so the position about the discount rate is not clear in any event.

164. I find that Mr G is merely speculating. His opinion of what is fair or an appropriate discount rate assumption is not sufficient to raise a case against the Trustee that its transfer value assumptions are not based on best estimate and are in breach of regulatory guidance.

165. Further, as per the TPR guidance, 'best estimate' means the best estimate of the amount of money needed at the effective date of the calculation which, *if invested by the scheme*, would be just sufficient to provide the benefits (my emphasis). The scheme in question is the AXA Scheme, not the Moody Scheme and its investment strategy and underlying actuarial assumptions will be different.
166. While Mr G believes the onus is being put on him to prove a negative, as he is bringing this complaint it is for him to, at the very least, set out a prima facie case that there has been some maladministration and that he has suffered injustice (financial or non-financial) as a result of the Moody Scheme merging with the AXA Scheme, and that this was caused by failures on the part of the Trustees. Based on the available evidence, I do not find he has done so.
167. I do not uphold Mr G's complaint.

Dominic Harris

Pensions Ombudsman
2 January 2025

Appendix

Relevant extracts from the Announcement

“Following a review by AXA UK plc of the various closed pension schemes in existence across the Group, it has been agreed between the trustees of the W S Moody Scheme, the trustees of the AXA Scheme, AXA UK plc and Oldco (No.1) Limited (the current principal employer of the WS Moody Scheme) that all the assets and liabilities of the WS Moody Scheme will be transferred to the AXA Scheme.

It is intended that the benefits that you have secured under, or the pension that you currently are being paid, from the W S Moody Scheme will transfer to the AXA Scheme. Once all the assets and liabilities of the W S Moody Scheme that relate to you have been transferred you will be a member of the AXA Scheme, and the W S Moody Scheme will then be wound up and will cease to exist. You do not need to take any action as a result of this notice.

...

***If you are a deferred member**, the benefits to be provided to and in respect of you will be the same in the AXA Scheme as they were in the W S Moody Scheme as will the rights and options attaching to your benefits. Your benefits will be of equal value immediately after the transfer compared to the position immediately before the transfer. The only difference will be that your benefits will be provided out of the AXA Scheme instead of the W S Moody Scheme. ...*

...

Safeguarding your benefits

The transfer could not proceed without the approval of the Trustees of the W S Moody Scheme. The Trustees of the W S Moody Scheme have taken legal and actuarial advice specifically on this issue and have agreed to make the transfer. In particular the Trustees have obtained a certificate from the actuary that the value of members' benefits, including discretionary benefits, under the AXA Scheme, will be at least the same as those which applied under the W S Moody Scheme.

...

Moreover, the security of your benefits will be enhanced by a strong employer, AXA UK plc, being primarily responsible for the funding of the AXA Scheme.

....

Next steps

Unless you have registered for enhanced or fixed protection, there is no need for you to take any action. The transfer will happen automatically on or after 31 October 2016. ...

...

Technical notes

This announcement confers no rights to benefits. Rights to benefits are conferred in accordance with the terms and conditions of the trust deed and rules of the W S Moody Scheme and, after the transfer, the AXA Scheme, as amended, and, where applicable, the transfer agreement which sets out the terms and conditions of the transfer from the W S Moody Scheme to the AXA Scheme. Please note that the transfer is subject to the satisfaction of certain formal conditions in the transfer agreement.”