CAS-55231-T8P5

Ombudsman's Determination

Applicant	Mr L
Scheme	Pilots' National Pension Fund **(the Fund)**
Respondents	PNPF Trust Company Limited (**the Trustee**)
	Capita

Outcome

1. Mr L's complaint against the Trustee and Capita is partly upheld. To put matters right, the Trustee shall pay Mr L £500 in recognition of the significant distress and inconvenience which he has suffered in relation to this matter.

Complaint summary

2. Mr L has complained that an early retirement factor of 7.2% was applied to his pension benefits. This reduction led to the provision of an incorrect illustration of a cash equivalent transfer value (**CETV**).

Background information, including submissions from the parties

3. Mr L was a self-employed Harbour Pilot.

4. On 10 September 2000, Mr L became a member of the Fund, which is a defined benefit arrangement.

5. In March 2018, Mr L requested an illustration of a CETV in respect of his pension benefits.

6. On 24 May 2018, Capita sent a letter to Mr L (**the May 2018 CETV**). The total transfer value provided was £627,714. This included a post 1997 transfer value arising from post 1997 contracted out service of £559,714. The illustration was based on an assumed leaving date of 8 May 2018 and was not guaranteed.

7. On 20 February 2019, Mr L sent an email to Capita. He asked why the May 2018 CETV referred to only part of his service as being post 1997 when he had no pensionable service prior to 2000. Capita said it would refer the calculation of the CETV illustration back to the Fund Actuary (**the Actuary**) for review.

8. On 1 March 2019, Capita sent an email to Mr L which said it had received a response from the Actuary. The transfer value that had been provided in the May 2018 CETV was incorrect. The actual transfer value that was available at that time was £295,027. It appreciated that the correct value was significantly lower, and it apologised for the error. It would calculate another CETV illustration free of charge for him.

9. On 9 August 2019, Mr L became a deferred member of the Fund.

10. On 17 September 2019, Capita sent Mr L another CETV illustration **(the September 2019 CETV**) based on a leaving date of 9 August 2019. This gave the transfer value as £345,466 which was guaranteed until 17 December 2019.

11. On 6 November 2019, Capita sent an email to Mr L and said that, further to his emails, it now had an explanation from the Actuary which was in summary:-

- The September 2019 CETV was based on his preserved benefits in the Fund as calculated at the time of his leaving.
- The transfer value was then calculated by making several assumptions as to:
  - how his preserved pension would increase from the date of calculation until his retirement; and
  - how his pension would be paid once he retired, for example the rate of pension increases he would receive and how long his pension would be expected to be paid.
- These expected benefits were then discounted back to the date of the CETV illustration in line with the investment returns the Trustee expected to achieve on the Fund assets. The assumptions used for the purposes of these calculations were agreed by the Trustee and Actuary and took account of current market conditions at the time of the calculation.
- If he had any specific concerns about his transfer value, he should provide them so they could be forwarded to the Actuary.

12. On 9 November 2019, Mr L sent an email to Capita and said he had contacted several local financial advisers to gain advice and all four of them commented on how low the September 2019 CETV was. This was concerning and it was as if the Trustee was deliberately stopping people from transferring their money.

13. On 19 November 2019, Capita sent an email to Mr L and said it had now received an explanation regarding the September 2019 CETV. This had been provided by the Actuary for Mr L's independent financial adviser (**IFA**):-

- The assumptions currently used to calculate CETV illustrations were reflective of the Fund's current investment strategy which had a significant focus towards "growth" style investments such as equities.

- This was consistent with the Trustee's view that the Fund would continue as an ongoing concern for the foreseeable future. This approach may have differed from many other pension schemes as they may not enjoy the same strong support that the Fund received from all its participating bodies.

- A consequence of this was that these other schemes may also have had to have invested in assets that produced lower returns such as bonds and this would sometimes result in higher CETV illustrations all other things being equal. The Fund's investment strategy would be reviewed as part of the forthcoming triennial actuarial valuation due to be completed on 31 December 2019.

- It assured him that the Trustee had absolutely no intention of preventing members from exercising their option to transfer their benefits away from the Fund.

- An estimate of how his CETV illustration was calculated was provided for his information. The actual CETV calculation involved far more calculations, but the rough approximation given, resulted in a similar value to the September 2019 CETV.

14. The estimate provided to Mr L gave a final value of £349,000 and part of the calculation involved applying an early retirement factor of 7.2% to his pension benefits.

15. On 19 November 2019, Mr L sent an email to Capita and asked why the calculated figures in the estimated CETV were discounted by 7.2%. Mr L said that this was an extreme amount and could not be justified as no investment could give a safe return of this amount.

16. On 25 November 2019, Capita sent an email to Mr L and said it had been provided with the following response by the Actuary. It said in summary:-

    - The 7.2% per annum discount rate assumption was based on market conditions at the time of his transfer value calculation. It was intended to represent a long term expected rate of return on the "growth" assets of the Fund for example global equities.

    - The 7.2% discount rate assumption only applied for the period from now up until Mr L's assumed retirement date. At which point the assets of the Fund would be assumed to transition to lower return producing investments, for example bonds.

    - This approach had been certified by the Actuary and was consistent with the Trustee's current Statement of Investment Principles which had been submitted to and reviewed by the Pensions Regulator. For comparison, over the five years to 31 December 2018 the Fund's assets produced an average overall return of 6.6% every year.

- Mr L was right that there was no guarantee of obtaining this level of return. However, the investment returns actually received by the Fund were consistent with this approach and the strength of the support provided by the participating bodies allowed the Fund to “ride out” any short term market fluctuations.

17. On 2 December 2019, Mr L sent an email to Capita and said that after careful consideration and consultation, he felt the assumption discount rate of 7.2% was extremely high. He would like this discount rate to be reduced as it was based on an assumption of how well markets would do in the future. This rate had to be reduced to a more favourable percentage or zero.

18. On 13 December 2019, Capita sent an email to Mr L and reiterated the information it had previously provided. It also said there was no scope for the transfer value assumptions to be tailored for individual members’ circumstances. It also said that paying a higher amount than the transfer value quoted would be unfair to those members whose benefits remained in the Fund.

19. On 15 December 2019, Mr L made a complaint under the Fund’s Internal Dispute Resolution Procedure (**IDRP**). He said in summary:-

- He was unhappy with the discount on his defined benefit transfer value of 7.2% a year until he was age 65.

- This amount was unjust, unfair and should be reduced to zero. No financial adviser would recommend transferring his money out of the Fund with this level of penalty.

- The financial advisers also informed him that they had never seen a defined benefit transfer value penalised so badly from £627,714 down to £345,466.

- He first asked about the transfer value back in May 2018. He had then already started the process of leaving the Fund. He has requested information from Capita and the Actuary, but only minimum information was given. This was a clear indication that people were hiding things.

20. On 19 February 2020, the Trustee sent Mr L a response to his complaint. It said in summary:-

- It apologised for the incorrect May 2018 CETV and reassured him that the cause of the error had been identified and addressed. A correctly calculated CETV illustration had been provided in September 2019, and he was able to request a further updated CETV illustration if he wished.

- The Trustee believed that the pre-retirement discount rate of 7.2% was reasonable and appropriate. It was within the Trustee’s sole power to determine the actuarial assumptions which applied to CETV calculations, having taken appropriate professional advice. The discount rate assumptions used to calculate CETV illustrations were based on the investment returns the Trustee and the Actuary currently expected to achieve on the Fund's assets.

- The Trustee had the sole power of investment in respect of the Fund under the Fund Rules. This wide power permitted the Trustee to make decisions on the application of investment of the Fund having taken advice from an appropriate investment adviser. The Trustee had a similar statutory power under The Occupational Pension Schemes (Investment) Regulations 2005. More specifically the Trustee had the sole power to determine the actuarial assumptions which are applied when calculating CETV illustrations having taken actuarial advice under the Occupational Pension Schemes (Transfer Values) Regulations 1996.

- The way the Trustee chose to apply and invest the Fund's assets had been certified by the Actuary. The approach also followed the Trustee's Statement of Investment Principles which had been submitted to and reviewed by The Pensions Regulator.

21. Following the complaint being referred to The Pensions Ombudsman, the Trustee and the Applicant made further submissions that have been detailed below.

The Trustee's position

22. It acknowledged and apologised for the error made in the May 2018 CETV illustration. It was unable to honour the amount stated as Mr L did not have a legal entitlement to it. The Trustee also noted that Mr L did not attempt to progress with the May 2018 CETV illustration at the time it was presented to him.

23. The 7.2% pre-retirement discount rate applied to the September 2019 CETV illustration was not the cause of the reduction compared to the May 2018 CETV illustration. Mr L appeared to have combined these two unrelated issues. The May 2018 CETV illustration was higher than it should have been simply due to human error.

Mr L's position

24. He tried to progress with the May 2018 CETV illustration. He went to three financial advisors for information, got his house valued ready to sell, and was ready to give notice to Forth Ports Ltd where he was employed. An apology was not an acceptable outcome as £282,248 of his life savings were being withheld.

25. The Trustee said that all members must be treated in the same way and have their CETV illustration calculated using the Trustee's agreed actuarial assumptions at the time the quotation is provided. This cannot be true as the returns expected will vary on a year-to-year basis and some members will benefit more than others. Using a 'discounted rate' of 7.2% was holding everyone to ransom.

26. He received a further CETV illustration in February 2024 which gave a transfer amount of £328,193. This was over £200,000 less than when he first started his complaint, and he was unhappy with the amount offered.

Adjudicator’s Opinion

27. Mr L’s complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator’s findings are summarised in paragraphs 28 to 34 below.

28. The Trustee agreed that the May 2018 CETV illustration provided to Mr L was incorrect but said this resulted from human error and was not due to the application of the early retirement factor. There was no dispute that Mr L was provided with incorrect information so there was no doubt that an error occurred, and Mr L was disadvantaged as a result.

29. In this case, the provision of incorrect information amounted to maladministration. As maladministration had occurred, the normal course of action would be, as far as possible, to put Mr L back in the position he would have been in had the error not occurred. This did not, however, mean that the Trustee should pay Mr L a level of benefit to which he was not entitled. For the complaint to succeed it would need to be reasonable for Mr L to have relied on the misinformation and having done so, to have suffered financial detriment as a result.

30. The Adjudicator considered whether it was reasonable for Mr L to rely on the May 2018 CETV illustration. The letter provided to support the May 2018 CETV illustration did state that the amount was not guaranteed, and it was based on a May leaving date. In addition, Mr L did note some months later that the CETV illustration did not classify all his service as taking place post 1997. In the circumstances the Adjudicator’s view was that Mr L should not have fully relied on the May 2018 CETV illustration when making irreversible decisions about his pension benefits.

31. Mr L indicated that he wanted to put his house on the market in order to downsize and had made plans regarding when to retire. However, he was able to continue working when he received the corrected September 2019 CETV illustration and adjust his plans. In the Adjudicator’s view, Mr L had not suffered any financial detriment as a result of the May 2018 CETV illustration. However, Mr L had suffered a loss of expectation regarding the transfer value that he could receive for his pension benefits.

32. Although he was aware that his service was not correctly represented in the May 2018 CETV illustration, Mr L would not have been aware that a correct CETV illustration would be a considerably lower figure. In the Adjudicator’s opinion the loss of expectation had caused Mr L significant distress and inconvenience, and she recommended an award of £500.

33. Mr L also said that the reason that the May 2018 CETV illustration was incorrect was because a 7.2% early retirement factor was not included in the calculation. The Trustee confirmed that the incorrect information was due to human error and had no connection with the early retirement factor. The Adjudicator noted that Mr L was unhappy with the level of early retirement factor that had been applied when calculating his correct September 2019 CETV illustration. In the Adjudicator's view the Trustee was able to take the advice of the Actuary when setting the assumptions used in a CETV illustration, and there had been no maladministration with regard to the use of 7.2% as an early retirement factor.

34. The Adjudicator noted Mr L's comments that the assumptions may change and so all members were not being treated equally. Mr L did not have a pot of money invested in the Fund but rather he had guaranteed pension benefits that the Trustee must provide. A CETV represented the assumed cost of providing those benefits at the time the CETV illustration was produced. Members were entitled to a CETV illustration based on the assumptions that were in place at the time their request was made, and these could change depending on market conditions. The Adjudicator understood that Mr L wanted to transfer his benefits out of the Fund and give up his guaranteed benefits. Currently, due to higher interest rates, the return on Fund assets had increased and the amount of cash needed to provide the guaranteed benefits had fallen. This meant that CETV illustrations would be lower than in previous years. This did not mean that the Trustee had done anything wrong.

35. It was the Adjudicator's view that Mr L's complaint should be partially upheld.

36. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L provided his further comments which are:-

- The award of £500 did not recognise the distress and inconvenience which he had suffered. The matter had gone on since 2019 and he had lost five years of his life in trying to resolve this issue.

- His financial loss was £627,714. The £500 offered was only a fraction of this amount and could only be classed as an insulting offer.

37. I have considered Mr L's further comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

38. There is no dispute that Mr L was given incorrect information in the May 2018 CETV illustration. The Trustee has acknowledged this, and Mr L was provided with correct information in the September 2019 CETV. The Trustee and Capita have also answered Mr L's questions regarding the 7.2% early retirement factor and provided him with information about how his CETV illustrations were calculated, within a reasonable period. Mr L did not have any outstanding points that he needed to pursue over an extended period of time.

39. The Adjudicator recommended an award of £500 to acknowledge Mr L's loss of expectation with regard to his CETV value. I agree with the Adjudicator that this is an appropriate level of distress and inconvenience to award.

40. Mr L has said that he has suffered a financial loss of £627,714 which represents the value stated in the May 2018 CETV illustration. Mr L is not entitled to this amount as it was provided in error. Mr L is only entitled to a CETV amount that represents the assumed cost of providing his guaranteed benefits in the Fund at the time the CETV illustration is produced.

41. Mr L is still entitled to his benefits from the Fund and the fact that his CETV illustrations have varied does not indicate that he has suffered any financial loss.

42. I partly uphold Mr L's complaint.

Directions

43. Within 28 days of the date of Determination, the Trustee shall pay Mr L £500 in recognition of the significant distress and inconvenience Mr L suffered, as a result of being sent an incorrect CETV illustration in May 2018.

Anthony Arter CBE

Deputy Pensions Ombudsman
16 May 2024