

Ombudsman's Determination

Applicant	Mr S
Scheme	Southern Electric Group of the Electricity Supply Pension Scheme (the Scheme)
Respondent	Southern Electric Group Trustees Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr S has complained that his Cash Equivalent Transfer Value (**CETV**) was materially lower than an initial illustration he had received. This was due to the Trustee changing the Scheme's actuarial assumptions for CETVs after his illustration had been issued. The Trustee did not tell him that he had three months from the date of the illustration to transfer his benefits on the previous assumptions, so he missed the deadline.
3. Mr S' CETV was reduced by around £235,000. He wants to be reimbursed for the financial loss and the distress and anxiety this caused him.

Background information, including submissions from the parties

4. Mr S was an active member of the Scheme, a Defined Benefit (**DB**) arrangement.
5. On 6 April 2017, at age 63, Mr S requested a CETV illustration (**the Illustration**).
6. The Illustration was calculated on 19 April 2017 and issued to Mr S on 9 May 2017. The transfer value was £1,069,735.68. As Mr S was an active member of the Scheme, the Illustration was indicative and not guaranteed.
7. The Trustee has said that the letter accompanying the Illustration stated:

"The transfer value quotation is not guaranteed and is for illustration purposes only. Please note that as it is an estimate, and your transfer value is linked to market conditions. The subsequent transfer value provided could be higher or lower."

8. On 7 June 2017, after receiving advice from the Scheme Actuary, the Trustee reviewed the Scheme's actuarial assumptions for calculating CETVs. As a result, the assumptions were amended with effect from 7 June 2017, to become consistent with the assumptions used in the Scheme's 31 March 2016 actuarial valuation. These changes resulted in a reduction in CETVs. The reduction for a 63-year-old member was around 20%.
9. The Trustee had agreed a special transitional arrangement for active members who had requested a CETV illustration before 7 June 2017. If one of these members subsequently requested an updated illustration for finalising their transfer on or after 7 June 2017, but within three months of the date of the initial illustration, the previous assumptions would be used if they resulted in a higher CETV.
10. On 10 October 2017, Mr S contacted the Scheme's Pensions Administration department, and he was informed of the assumption changes.
11. On 11 October 2017, Mr S complained to the Trustee. He said that he was disappointed and upset that the Trustee had allowed a three-month period for CETV illustrations to proceed on the previous assumptions without telling him. Mr S stated that if he had known about the deadline, he would have made a concerted effort to reach a decision about his transfer sooner. Mr S wanted the Trustee to uphold the terms of the Illustration.
12. On 3 November 2017, the Scheme's pensions manager replied to Mr S' complaint. The main points were as follows:-
 - By law, CETVs for deferred members were guaranteed for three months. This was because only deferred members had the legal right under pension's legislation and the Scheme rules to a transfer value for their benefits.
 - The Trustee had considered whether it should proactively notify active members who had recently requested CETV illustrations about the changes and the transitional arrangements. On balance, it had decided against this, as it did not want to be seen to be incentivising active members to opt out of active pensionable service.
 - Mr S' transitional arrangement had ended on 9 August 2017, and any new CETV illustration needed to be calculated on the new assumptions.
 - CETV illustrations for active members were indicative. In order to secure a three-month guarantee period, Mr S would need to become a deferred member before transferring his benefits.
13. The Trustee did not uphold Mr S' complaint.
14. On 17 January 2018, Mr S complained under Stage One of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

15. On 23 January 2018, Mr S requested to proceed with his transfer out of the Scheme. He had remained an active member of the Scheme up to this point.
16. On 12 March 2018, the Trustee responded to Mr S' complaint, but did not uphold it.
17. On 9 January 2020, Mr S complained under Stage Two of the Scheme's IDR. He said that the Trustee had disregarded his ability to decide what was best for his personal financial situation. He stated that if a Trustee Director had been in a similar situation, they would have been able to act on it in a timely manner. He believed that the Trustee had not acted in his best interest, and it had been unprofessional and flippant in its decision not to notify him of the special transitional arrangement.
18. On 3 February 2020, the Trustee replied. The main points were as follows:-
 - The Scheme Actuary had recommended the Trustee to lower the transfer value assumptions.
 - The Trustee's legal adviser had advised that the Trustee was under no legal obligation to notify members of the assumption changes.
 - The Trustee did not consider it appropriate to proactively inform impacted members, as this action could have been construed as providing encouragement or financial advice to them.
 - If there was a conflict of interest which could potentially influence the decision of a Trustee Director, the conflict was declared, and the Trustee Director removed from the relevant decision-making process.
19. The Trustee did not uphold Mr S' complaint.

Adjudicator's Opinion

20. Mr 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 below:-
 - The Illustration was issued to Mr S on 9 May 2017. It did not have a guarantee period, as Mr S was an active member and still accruing Scheme benefits. The Illustration stated this and noted that the final transfer value could be higher or lower.
 - It was only when Mr S contacted the Scheme's Pensions Administration department on 10 October 2017 that he found out about the assumption changes and the three-month transition period. By this time, it was more than three months from the date of the Illustration, therefore he had missed the opportunity to transfer his benefits before the end of the transition period. His updated CETV was materially lower than the Illustration.

- The change in assumptions had a significant impact on Mr S' CETV. The Trustee had an obligation to review the Scheme's transfer assumptions so had sought and received legal and actuarial advice on how the changes should be implemented. There was no legal obligation under the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (**the Disclosure Regulations**) for the Trustee to notify members of the assumption changes, and the Trustee believed it would not be appropriate to do so anyway.
 - The Trustee had followed a reasonable decision-making process and received then acted on professional advice where appropriate.
21. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which are summarised below:-
- The Trustee was aware of the impact the change would have on members wishing to leave the Scheme. However, the Trustee's decision not to inform members totally negated their decision. Mr S asked why the Trustee would want to "make an offer" by providing the Illustration but then not inform those members of the change.
 - The Trustee had not acted in Mr S' best interests and had prevented him from benefitting from the "offer".
22. I have considered Mr S' comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

23. I empathise with Mr S in so far as he was expecting to receive a materially higher CETV than he actually received when he transferred out of the Scheme. He feels that he missed out on a higher value because the Trustee did not inform him of the three-month transition period. However, the Illustration stated that it did not have a guarantee period, and so Mr S should have been aware that the value could change with market conditions.
24. It was unfortunate for Mr S that the Trustee reviewed and changed the underlying CETV assumptions shortly after he received the Illustration. The change had the consequence of reducing the value shown in the Illustration. But the Trustee was obligated to carry out periodic reviews of the CETV assumptions, and the change was consistent with the Scheme's 2016 actuarial valuation.

25. Mr S has submitted that not being told about the transition period was not in his best financial interest. He only found out about the three-month transition period when he telephoned the Scheme's Pensions Administration department approximately two months following the end of the Illustrations' transition period. However, the Trustee had received advice from the Scheme Actuary and lawyer on the matter, and based on this advice, had decided not to proactively inform affected members of the transition period.
26. I find that the Trustee did consider the matter appropriately, and its decision was reasonable, as to notify members could be seen as an endorsement or inducement to transfer out of the Scheme.
27. Although the decision may not have been in Mr S' best financial interest, the Trustee was required to consider the best interest across all of the Scheme's beneficiaries, and paying Mr S a higher CETV than he was entitled to after the end of the transition period would have been detrimental to other Scheme members. He also had the choice to remain in the Scheme and receive his full benefits.
28. I do not uphold Mr S' complaint.

Anthony Arter CBE

Pensions Ombudsman
16 May 2023