

Ombudsman's Determination

Applicant	Mr N
Scheme	Safeway Pension Scheme (the Scheme)
Respondents	Capita Employee Solutions (Capita) The Trustee of the Safeway Pension Scheme (the Trustee)

Outcome

1. Mr N's complaint is partly upheld. To put matters right, Capita shall pay a total of £1,500 to Mr N in recognition of the distress and inconvenience that he has suffered.

Complaint summary

2. Mr N has complained that administrative errors by Capita prevented him from making a timely decision about the transfer of his benefits out of the Scheme. He said that he received a lower cash equivalent transfer value (**CETV**) because of the delay.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge that there were other exchanges of information between all the parties.
4. On 12 April 2017, Capita wrote to Mr N in response to his enquiry about a potential transfer of his benefits out of the Scheme (**the April 2017 CETV**). The postcode used for Mr N's address ended '8JQ'. Capita quoted a CETV of £384,349.96, with the date of calculation as '11 April 2017'. It has since confirmed that this value was correctly calculated.
5. On 13 April 2018, Capita wrote to Mr N in response to a further enquiry about a potential transfer of his benefits out of the Scheme (**the April 2018 CETV**). The postcode used for Mr N's address ended '8QQ'. Capita quoted a CETV of £407,172.80, but the date of calculation was again given as '11 April 2017'. Capita's accompanying letter said that the value was guaranteed for three months from this date of calculation. In that letter, Capita also asked Mr N to provide evidence that he had received appropriate advice, in relation to the transfer, by no later than 13 July 2018. The correspondence also included the following two statements:

“If you make a formal application for payment within three months of the date of this calculation, then the transfer value quoted will normally be paid. **The amount could be subject to reduction in exceptional circumstances, in which case you would be given the opportunity for your application to be withdrawn.**”

And

“Cash Equivalent transfer values are calculated using a method and basis decided by the Trustee on actuarial advice, which is consistent with legislation, the rules of the Scheme and guidance published by the Board of Actuarial Standards. The method and/or basis may therefore be revised from time to time, to reflect changes, for example, in legislative and financial conditions. In addition, that the actual level of cash equivalents depends on investment market conditions as well as on the method of calculation and values can move up or down.”

6. On 18 June 2018, Mr N telephoned Capita to explain that he had not received the CETV illustration that he had requested. Capita’s call notes record that it reissued a copy of the April 2018 CETV that same day.
7. On 3 August 2018, Mr N telephoned Capita. He highlighted that the copy of the April 2018 CETV he had received stated a calculation date of 11 April 2017. Capita confirmed that this was incorrect and apologised for the error, but it considered that the three-month deadline, for Mr N to be paid the April 2018 CETV, had expired.
8. During the telephone call, Mr N asserted that the April 2018 CETV was originally sent to an incorrect address. He said he had been on holiday until 14 June 2018, so it was only when he returned that he became aware that he was yet to receive his CETV illustration. However, Capita’s position was that the correspondence for the April 2018 CETV was correctly addressed. It added that Mr N’s postcode had been updated in April 2018. Capita said it would consider whether it should extend the guarantee period for the April 2018 CETV or calculate a new CETV.
9. On 6 August 2018, Capita wrote to Mr N. It said that, as a gesture of goodwill, it was prepared to extend the guarantee date for the April 2018 CETV to 3 September 2018. It explained that the relevant transfer documentation would need to be submitted by this date. Capita confirmed that the transfer value was still £407,172.80. It set out the same figures for Mr N’s deferred benefit elements, as had been included in the original April 2018 CETV, but the calculation date was updated to 11 April 2018. The correspondence also included the same statement as quoted in paragraph 5 above.
10. On 23 August 2018, Mr N’s independent financial adviser (**the IFA**) telephoned Capita to highlight discrepancies in the deferred benefit figures in the April 2018 CETV. Capita accepted that it had incorrectly quoted these figures as at 2009, rather than 2015. The IFA requested that Capita extend the guarantee date again, given that its advice would depend on the correct information being provided. Capita said it would consider this but would first check to see if the April 2018 CETV had been correctly calculated.

11. On 31 August 2018, the IFA telephoned Capita to chase a response to the query it had raised on 23 August 2018. Capita said it was still considering the matter and that it would respond within a week.
12. On 6 September 2018, Capita emailed the IFA. Capita is unable to provide a copy of this email, but the IFA has provided a summary: Capita explained that it had taken the decision to recalculate Mr N's CETV, rather than further extend the guarantee date. It said it took this decision because the April 2018 CETV had been correctly calculated. As the previously extended guarantee date of 3 September 2018 had not been met, Capita said it would not honour the CETV of £407,172.80.
13. On 7 September 2018, Capita wrote to both Mr N and the IFA to provide an updated CETV illustration (**the September 2018 CETV**). The postcode used for Mr N's address ended '8QQ'. The letter sent to the IFA quoted a CETV of £396,963.95, with a calculation date of 31 August 2018, whereas the CETV quoted in Mr N's letter was £396,362.86.
14. On 3 October 2018, the IFA emailed Capita. It set out a timeline of events for Mr N's case and explained that the September 2018 CETV had not been received until 20 September 2018. The IFA noted that the new CETV was around £10,000 lower than the April 2018 CETV and said that Mr N had potentially been disadvantaged by the errors in Capita's previous correspondence. It asked Capita if it would honour the April 2018 CETV, in the event that Mr N decided to transfer out of the Scheme.
15. On 4 October 2018, the IFA emailed Capita to provide supplementary information to its email of the previous day. It highlighted the discrepancies in the figures provided by Capita, which included the following:
 - The April 2017 CETV quoted Mr N's 'Pension at Date of Leaving' as £12,767.70 and his 'Post 97 Pension at Date of Leaving' as £7,059.51.
 - The April 2018 CETV quoted Mr N's 'Pension at Date of Leaving' as £9,087.38 and his 'Post 97 Pension at Date of Leaving' as £7,059.51.
 - The September 2018 CETV sent to Mr N quoted his 'Pension at Date of Leaving' as £12,767.70 and his 'Post 97 Pension at Date of Leaving' as £3,713.47. The CETV was £396,362.86.
 - The September 2018 CETV sent to the IFA quoted Mr N's 'Pension at Date of Leaving' as £12,767.70 and his 'Post 97 Pension at Date of Leaving' as £7,059.51. The CETV was £396,963.95.
16. On 22 October 2018, the IFA requested that the complaint be considered under the Scheme's two-stage internal dispute resolution procedure (**IDRP**). It said the fact that, on more than one occasion, it had been provided with inaccurate information meant it was unable to properly advise Mr N before the guarantee period expired. The IFA was also concerned about the discrepancies in the figures included in the two versions of the September 2018 CETV.

17. On 13 December 2018, Capita issued its response to Mr N's complaint. This was not under the IDRPs, but Capita said that if Mr N was unhappy with its response, he could refer the complaint to the Trustee for consideration under the IDRPs. Capita said the April 2018 CETV had indicated that the transfer value was guaranteed for three months from the date of calculation. It added that the value had been correctly calculated. However, it noted that the 'Pension at Date of Leaving' and the calculation date, stated in the correspondence, were incorrect. Capita said that an application to transfer was not made within what it considered to be the three-month guarantee period for the April 2018 CETV. Its position was that given the April 2018 CETV had been correctly calculated, it was not prepared to extend the guarantee date beyond what it had already agreed.
18. Capita acknowledged that there were discrepancies in the September 2018 CETVs issued to Mr N and the IFA. It said that the version issued to Mr N had included an incorrect figure for his 'Post 97 Pension at Date of Leaving', but the CETV of £396,362.86 was correct. Capita asserted that the letters it sent to Mr N in 2018 had been correctly addressed. It offered Mr N £250 in recognition of the inconvenience he had been caused.
19. Capita has since confirmed that its response of 13 December 2018 actually stated the incorrect CETV, and this should have been given as £396,963.95.
20. On 14 January 2019, the transfer of Mr N's pension benefits out of the Scheme was completed. Capita said the amount transferred was £396,963.95.
21. On 30 January 2019, the Trustee wrote to Mr N with details of how to register a complaint under the IDRPs.
22. On 31 July 2019, the Trustee issued its response under stage one of the IDRPs. It accepted that incorrect information had been included in the correspondence for the April 2018 CETV. However, it did not agree that this was the reason why Mr N had missed the deadline to receive this CETV. The Trustee said that the original deadline was 11 July 2018 and Mr N had not requested an extension until after this date. The deadline was extended to 3 September 2018, but Mr N did not return his transfer documents until 28 November 2018. The Trustee asserted, with reference to the timescales involved, that the second deadline would not have been met, even if there had been no errors in the initial correspondence.
23. On 19 December 2019, the IFA wrote to the Trustee to request that Mr N's complaint be moved to stage two of the IDRPs. The correspondence set out that Mr N considered that the April 2018 CETV had originally been sent to an incorrect address and this error was not picked up until June 2018. When the reissued copy of the April 2018 CETV was received, there were discrepancies in the figures that had to be queried with Capita. This prevented Mr N from confirming his request to transfer out of the Scheme until after the guarantee date for the April 2018 CETV had passed, because he did not wish to prejudice his case by accepting a lower value.

24. On 17 September 2020, the Trustee issued its response under stage two of the IDR. It said it was regrettable that some of the information included in the April 2018 CETV was incorrect and that Mr N's receipt of this correspondence had been delayed. Despite this, the Trustee considered that Mr N had made the decision to transfer out of the Scheme in the knowledge that he would receive a lower transfer value than the April 2018 CETV. The Trustee added that it had a duty to pay the correct benefits due to members of the Scheme and if it knowingly paid incorrect benefits, it would be in breach of the Scheme's Rules.

Adjudicator's Opinion

25. Mr N's complaint was considered by one of our Adjudicators, who concluded that further action was required by Capita. The Adjudicator's findings are summarised below:-

- The correspondence for the April 2017 CETV, dated 12 April 2017, was incorrectly addressed, but the subsequent CETV illustrations issued by Capita were correctly addressed. There was insufficient evidence to conclude that Capita was responsible for Mr N's non-receipt of the April 2018 CETV.
- Given the errors in the correspondence for the April 2018 CETV, a reasonable approach was to consider that the quoted value, of £407,172.80, should initially have been valid until 13 July 2018. Mr N did not contact Capita to query the calculation date for the April 2018 CETV until 3 August 2018. However, Capita agreed to extend the deadline to 3 September 2018.
- The IFA contacted Capita on 23 August 2018 regarding discrepancies in the figures for Mr N's deferred benefits. Capita said it would look into this matter but did not commit to extending the guarantee period again. On 6 September 2018, Capita said it would not extend the deadline, because the April 2018 CETV had been correctly calculated.
- The errors in the information provided by Capita did not prevent Mr N from accepting the April 2018 CETV, before the final deadline, if he was happy to transfer at that value. Capita's correspondence stated that the transfer value quoted would only be subject to a reduction in exceptional circumstances and, if such circumstances arose, Mr N could withdraw his request to transfer.
- The discrepancies in the correspondence for the September 2018 CETV did not arise until after the final deadline to receive the April 2018 CETV had passed, so they did not prevent Mr N from accepting the April 2018 CETV within the guarantee period.
- The errors in the figures provided by Capita amounted to maladministration. The Adjudicator's view was that Capita should pay £500 to Mr N in recognition of the significant distress and inconvenience that it caused him.

26. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided additional comments in response which are summarised as follows:-
- Although the original deadline for the April 2018 CETV had passed when the IFA contacted Capita about the discrepancies in the figures, on 23 August 2018, it was still within the extended guarantee date of 3 September 2018, meaning it was valid at that time.
 - It was not reasonable to expect him to make what was an important decision without the comfort that he had all the correct information. The CETV was greater than £30,000, so the transfer could only proceed if he had received financial advice. Given the uncertainty around the information provided, there was no way that the IFA could have provided advice before the correct figures were confirmed. Capita's errors meant that he was unable to obtain the higher transfer value.
27. Mr N's comments do not change the outcome and I agree with the Adjudicator's Opinion, save in respect of the quantum of the award to be made to Mr N.
28. Capita accepted the findings in the Adjudicator's Opinion and did not make any further submissions for the complaint. The Trustee also accepted the findings and explained that it was prepared to pay the recommended award of £500 to Mr N, because Capita is no longer the administrator of the Scheme.

Ombudsman's decision

29. As set out in the correspondence for the April 2018 CETV, transfer values for the Scheme were calculated on a basis decided by the Trustee and informed by actuarial advice, which was consistent with relevant legislation and the Scheme's Rules. It was clearly stated that the calculation methodology could be revised, and transfer values could change over time.
30. The statutory requirement is that the guarantee period for a CETV is within three months of the application for a statement of entitlement. As noted by the Adjudicator, the April 2018 CETV quoted an incorrect calculation date of 11 April 2017. However, in my view that typographic error does not invalidate the statement of entitlement, and I find it was not the cause of Mr N missing the opportunity to take the higher, guaranteed CETV amount. Rather, the correspondence was dated 13 April 2018, so the Adjudicator reasoned that, in the absence of any information to confirm otherwise, 13 July 2018 was the latest date on which the statutory guarantee period could have expired. I agree with this approach. The calculation date was subsequently confirmed to have been 11 April 2018. Furthermore, the letter clearly stated that the independent advice required in advance of the transfer needed to be confirmed to the Trustee and Capita by 13 July 2018. However, Mr N did not contact Capita to raise the issue with the calculation date until 3 August 2018, which was well outside the original guarantee period. The errors identified by Mr N and his IFA should have been raised much earlier.

31. Having missed the three-month guarantee period, the extension offered by Capita at that point was, in my view, outside of the statutory transfer regime and amounted to an offer to make a non-statutory/discretionary transfer. Mr N has argued that when the IFA contacted Capita to discuss the discrepancies in the figures, this was before the extended deadline date of 3 September 2018. However, that the discrepancies were highlighted at this point does not mean the quoted CETV should have been 'frozen', or held, until such time as this was resolved. I find that Capita was not required to extend the 'guarantee' date¹.
32. I note that on 23 August 2018, Capita said it would consider whether it was appropriate to extend the guarantee date again, but it did not give its answer until 6 September 2018, which was after the existing deadline had passed. The Adjudicator was of the view that while Capita could have been more prompt with its response, this did not amount to maladministration. However, I do not share that view. The timing is such that I think it unlikely that Mr N and the IFA would have been able to receive updated figures, provide the relevant advice and trigger the transfer before 6 September 2018 in any event, but, with a looming deadline, it was in my view maladministration for Capita not to provide a prompt answer to Mr N as to whether deadline would be extended before it passed – and this caused Mr N significant distress and inconvenience. I find that an award of £500 should be made for that distress and inconvenience.
33. Mr N said that he was not in a position to receive financial advice on the transfer, nor make a decision about whether to proceed, until the discrepancies had been resolved.
34. In my view, the April 2018 CETV was sent to the correct address and then it was incumbent on Mr N and the IFA to identify and then question any discrepancies in the three-month guarantee period. As that had lapsed by the time that Mr N and his IFA contacted Capita, those errors are not, in my view, the cause of Mr N being unable to take the higher 2018 CETV. As a result, he is not able to insist on that higher figure.
35. However, I find that the errors in the figures provided by Capita did amount to maladministration and these errors caused Mr N serious distress and inconvenience (noting that there were errors on several occasions and that Capita were slow to put these errors right). As a result, I find that an award of £1,000 is appropriate recognition of the distress and inconvenience Mr N has suffered (separate to the earlier maladministration, which warrants a separate award of £500). Although the Trustee is willing to pay the award to Mr N, I find that as Capita was responsible for the maladministration in this case, it should pay the award.

¹ Had Mr N or his IFA raised these issues around the accuracy of the information in the statement of entitlement within the three-month guarantee period, the outcome may have been different. At that point, the dispute as to the figures may have engaged Regulation 14 of The Occupational Pension Schemes (Transfer Values) Regulations 1996 – which allows for an extension of the time for a member to exercise the option to take a CETV where there is a dispute as to the amount of the CETV.

CAS-63878-G1T9

36. I partly uphold Mr N's complaint.

Directions

37. Within 28 days of the date of this Determination, Capita shall pay a total of £1,500 to Mr N.

Dominic Harris

Pensions Ombudsman

12 July 2024