

## Ombudsman's Determination

Applicant	Mr E
Scheme	Judicial Pension Scheme 2015 ( <b>the Scheme</b> )
Respondents	Ministry of Justice ( <b>MoJ</b> ) XPS Pensions Consulting Limited ( <b>XPS</b> )

## Outcome

1. Mr E's complaint is upheld in part. MoJ and XPS shall pay £500 each (and so £1,000 in total) in recognition of the serious distress and inconvenience caused to Mr E.

## Complaint summary

2. Mr E complained that XPS delayed the transfer of his benefits from his ReAssure Personal Pension (**the ReAssure pension**) and the Lloyds Bank Pension Scheme No 2 (**the Lloyds pension**) into the Scheme. He said, in summary:-
  - XPS' letter dated 5 March 2020 guaranteed his quoted ReAssure pension transfer value. He would like it to honour that figure rather than the actual value ReAssure transferred.
  - XPS' customer service was extremely poor, so he had to continually contact it to expedite both his transfers.
  - XPS was slow to acknowledge his Pension Purchase payments.
  - He should be awarded £2,000 for the severe distress and inconvenience that XPS' delays, poor administration, and slow customer service caused him. He would also like MoJ to separately pay him £1,000 for the serious distress and inconvenience it caused him by not addressing his complaint points in its Internal Dispute Resolution Procedure (**IDRP**) stage two response. He considered that MoJ had simply repeated XPS' complaint response.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points.

4. On 25 January 2019, MoJ enrolled Mr E into the Scheme, a defined benefit (**DB**) pension scheme.
5. On 2 January 2020, Mr E telephoned XPS to ask about joining the Scheme.
6. On 3 January 2020, XPS emailed Mr E to advise him that he had already joined the Scheme on 25 January 2019. It attached transfer forms for Mr E to use should he wish to transfer any of his other pensions into the Scheme.
7. On 22 January 2020, Mr E contacted XPS about transferring two other pensions into the Scheme.
8. On 23 January 2020, XPS emailed a transfer authority to Mr E. He returned it to XPS later that day. He told XPS he wanted to transfer his ReAssure pension, a defined contribution (**DC**) unit linked policy, and his Lloyds pension, a DB pension with a guaranteed minimum pension element (**GMP**), into the Scheme.
9. On 27 January 2020, XPS told Mr E it had received his ReAssure transfer form.
10. On 12 February 2020, XPS:-
  - Requested the transfer of Mr E's ReAssure pension (**the ReAssure transfer**).
  - Requested a Cash Equivalent Transfer Value (**CETV**) illustration from Lloyds, which Lloyds rejected.
  - Sent a Letter of Authority (**LOA**) to Lloyds which it rejected. XPS then asked Mr E to complete a new LOA.
11. On 26 February 2020, XPS responded to Mr E's request for information about his added pension options (**Pension Purchase**) within the Scheme.
12. On 1 March 2020, Mr E returned his two transfer forms to XPS. He asked it to complete the transfers-in of his ReAssure and Lloyds pensions into the Scheme as quickly as possible because he was worried about the impact of the Coronavirus Pandemic on the values.
13. On 5 March 2020, the following exchanges took place:-
  - ReAssure wrote to Mr E to inform him that XPS needed to complete a form and provide a letter confirming the Scheme's bank details. It also told Mr E that he needed to provide a new verified example signature.
  - XPS wrote to Mr E to inform him that the administrator of the Lloyds pension, Willis Towers Watson (**WTW**), needed an LOA.
  - XPS sent a ReAssure transfer-in statement (**the Transfer-In Statement**) to Mr E. This stated he would receive an estimated additional annual Scheme pension of £2,774.58. Under the heading, 'Please note the following with regard to the quotation,' the covering letter stated:

“The amount on the enclosed Transfer-in Statement is guaranteed for two months from the date of the statement. If the transfer payment request is received within two months and is higher or lower than the transfer value quoted above, the amount of transferred-in pension will be adjusted proportionately.”

- Under the section ‘Transfer value quoted, Current Fund value quoted and Transferred-in pension of’ the Transfer-In Statement stated: -

“This amount is guaranteed for two months from the date of this statement. If the transfer payment request is received within two months and is higher or lower than the value above, the amount of transferred-in pension will be adjusted proportionately. That means that each £12.02 of transfer value will provide £1.00 of transferred-in pension.”

14. On 6 March 2020, Mr E returned his new Lloyds LOA to XPS.
15. On 9 March 2020, Mr E made a Pension Purchase payment to XPS.
16. On 17 March 2020, Mr E forwarded ReAssure’s forms to XPS. ReAssure advised Mr E that it was waiting for a discharge form and for him to verify his signature. ReAssure said it needed him to do this before it was able to make his transfer to XPS.
17. On 21 March 2020, Mr E sent ReAssure his signature verification by next day delivery.
18. On 30 March 2020, Mr E telephoned XPS as he had not heard from it since he sent it his Lloyds transfer forms. XPS incorrectly informed him that it had not received the forms from ReAssure. Mr E and XPS did not discuss his Lloyds pension in this telephone call. Later that day, Mr E sent XPS copies of previous correspondence concerning the ReAssure transfer.
19. On 2 April 2020, the following exchanges took place:-
  - ReAssure confirmed to Mr E that it was happy with the documentation that he had provided and his signature verification.
  - XPS acknowledged receipt of Mr E’s Lloyds transfer forms which he had sent it on 6 March 2020. It also told Mr E that he needed to have the signature on ReAssure’s forms witnessed.
  - Mr E subsequently emailed XPS to tell it that he had already had ReAssure’s forms completed and witnessed satisfactorily.
  - XPS then advised Mr E that it had asked WTW for a CETV illustration for his Lloyds pension.
20. On 12 April 2020, XPS requested another Lloyds CETV illustration after obtaining a new LOA from Mr E.

21. On 30 April 2020, XPS emailed Mr E to acknowledge receipt of his email of 2 April 2020. XPS advised him it had sent his ReAssure pension Discharge Form to ReAssure and instructed it to complete the transfer that day.
22. On 13 May 2020, XPS received Mr E's the transfer-in payment from ReAssure.
23. On 26 May 2020, Lloyds asked XPS for another LOA despite receiving a new one from XPS on 12 April 2020. It does not appear that XPS responded to this request until Mr E asked it for an update about his Lloyds pension transfer (**the Lloyds transfer**) in November 2020.
24. On 1 June 2020, Mr E chased XPS as he had not heard from it since his email of 30 April 2020. He said ReAssure had told him it had transferred his ReAssure pension into the Scheme, and he asked it to confirm its safe receipt of his transfer money.
25. On 4 June 2020, XPS responded to Mr E and said that it received a large volume of correspondence and, occasionally, it was unable to meet its planned timescales for responding. On the same day, Mr E replied to XPS to insist that his communications were time critical because of the consequences for his retirement. He complained that XPS had not met its service level agreements (**SLAs**).
26. On 31 July 2020, XPS wrote to Mr E to advise him that on 13 May 2020 it had received the amount of £29,328.01 from ReAssure in respect of his transfer. It said this had secured him an annual Scheme pension of £2,439.12. It also acknowledged Mr E's Pension Purchase payment.
27. On 6 August 2020, Mr E made a formal complaint to XPS about the ReAssure transfer. He said it had not transferred his ReAssure pension in a timely manner which had caused him a financial loss because his transfer value was lower than it should have been. He asked XPS to compensate him for the lower transfer value received and its poor customer service.
28. On 10 August 2020, XPS sent Mr E its response to his complaint under stage one of the Scheme's Independent Dispute Resolution Process (**IDRP**). It said, in summary:-
  - It received Mr E's signed ReAssure transfer form on 6 March 2020, so, to meet the six month statutory transfer deadline, it needed to conclude this transfer-in by 6 September 2020. It met this deadline so it did not consider it was liable for any financial loss caused to Mr E because the transfer value had reduced during the Coronavirus pandemic.
  - It apologised for not responding to Mr E's correspondence within its usual timescales. It noted that it had processed his transfers during the Coronavirus pandemic.
  - Mr E had a unit linked ReAssure pension policy. ReAssure had sent him quotation paperwork that stated that if a policy was unit linked, it did not guarantee the figures it quoted.

- Under the Scheme, the transfer-in procedure was that if the member accepted the quotation and confirmed they wished to proceed within two months of the initial quotation, the member “locked in” the factors XPS used to calculate the purchased pension benefits. It confirmed that Mr E had “locked in” the factors on 6 March 2020 when he returned his signed option form.
  - When it calculated the final benefits, it checked if the current factors at the time were better than the ones it had previously used. If they were, it awarded the member those factors.
  - As Mr E sent ReAssure his signature verification on 21 March 2020, it thought 22 March 2020 was the earliest date it could have requested Mr E’s ReAssure pension transfer. So, it had asked ReAssure to confirm the valuation of Mr E’s units on that day to establish whether Mr E had suffered a financial loss because of XPS’ delay in requesting his ReAssure pension transfer. ReAssure confirmed the transfer value would have been £27,078.71 on 22 March 2020.
  - It received the amount of £29,328.01 from ReAssure which bought him an additional annual Scheme pension of £2,439.12. The difference between the quotation transfer value of 22 February 2020 and the received transfer value was £4,033.52. The difference in additional Scheme pension was £335.46 per annum. The factors it used to calculate Mr E’s Scheme pension purchased remained unchanged from his original quotation.
  - Mr E said XPS should provide an award to him on the grounds that it could have requested the ReAssure transfer on 23 January 2020. However, this was the date that Mr E returned his transfer authority. So, it could not have completed a transfer on the same day.
  - It had agreed SLAs with MoJ for the turnaround of its work, but it was unable to respond to customers on a same day turnaround basis.
29. On 11 August 2020, Mr E emailed XPS to reiterate that he had suffered a financial loss because it had delayed the ReAssure transfer. He complained that:-
- XPS had not told him why there was a delay, and he considered it should have requested the ReAssure transfer on 2 April 2020 when ReAssure said it was happy with his transfer documentation and his signature verification.
  - XPS was wrong to use a notional transfer date of 22 March 2020 to assess financial loss, as he believed the transfer could have been completed before this.
  - He thought XPS had guaranteed the ReAssure transfer value in the Transfer-In Statement for two months, not the rate.
30. On 4 September 2020, Mr E emailed XPS to reiterate that the basis of his complaint was XPS’ failure to complete the ReAssure transfer within the two-month guarantee period given in the Transfer-In Statement.

31. In October 2020, Mr E emailed XPS as it had not contacted him about his complaint.
32. On 8 October 2020, Mr E made another Pension Purchase payment.
33. On 2 November 2020, Mr E raised a further complaint under the Scheme's IDRPs as XPS had not issued a further response to his complaint or acknowledged his October 2020 Pension Purchase payment.
34. On 9 November 2020, XPS sent Mr E confirmation that it had received his second Pension Purchase payment. It advised him that it had referred his complaint dated 6 August 2020 to its senior management to review.
35. On 16 November 2020, XPS sent a 'final' stage one response to Mr E under the Scheme's IDRPs. It said, in summary:-
  - XPS had not guaranteed the quoted transfer value figures in the Transfer-In Statement. It was unable to guarantee another pension provider's illustrative transfer value.
  - The Transfer-In Statement said the guaranteed transfer rate was that each £12.02 of the transfer value would provide £1.00 of transferred-in annual pension.
  - The earliest date it could have requested the ReAssure transfer was 22 March 2020. ReAssure had confirmed that the transfer value at that date was £27,078.71. The final transfer value XPS received was £29,328.01, so it did not believe Mr E was financially disadvantaged because of its actions. Consequently, it was unable to offer him an award for any financial loss on his ReAssure transfer.
  - It recognised that it had delayed Mr E's transfer. It apologised to him and offered him £100 as a goodwill gesture.
36. On 24 November 2020, Mr E rejected XPS' offer of £100. He complained again that XPS had not answered his initial complaint, or his new complaint, about his Pension Purchase payment. He said it had not told him how he could escalate his complaint.
37. On 1 December 2020, XPS sent Mr E the forms he needed to escalate his complaint to stage two of the Scheme's IDRPs.
38. On 28 December 2020, Mr E submitted a stage two IDRPs complaint. He claimed that XPS had failed to promptly process the ReAssure transfer-in request which had led to his transfer value reducing by £8,036.90. He stated that this reduction equated, at current day values, to a lost pension benefit to him of £9,357.74. He complained again that XPS' customer service was poor and outside its SLAs. Mr E also complained that his Lloyds transfer-in request had not been completed.
39. On 12 January 2021, XPS wrote to Lloyds to request a new CETV illustration. This was XPS' first exchange with Lloyds since the request on 26 May 2020.
40. On 2 April 2021, XPS contacted the Government Actuary's Department (**GAD**) for its guidance on how to deal with a transfer-in where there was a GMP element. It had

realised that it had wrongly told Mr E that he was unable to transfer his Lloyds pension because it contained a GMP. It understood that the Lloyds pension transfer was the first transfer-in it had received that involved GMP benefits. This guidance request necessitated GAD having to obtain MoJ guidance before it could draft its response to XPS. After requesting GAD's advice, XPS then sent it regular update requests until 2 September 2021.

41. On 20 April 2021, Lloyds advised XPS that Mr E was unable to transfer the Lloyds pension because he was already receiving a pension from that scheme. It appears that it shared information relating to another scheme member to support its position.
42. On 28 April 2021, XPS contacted Lloyds to query why Mr E could not transfer the Lloyds pension as the information it had provided did not appear to relate to him.
43. On 26 May 2021, Lloyds wrote to XPS to request a new LOA.
44. On 1 July 2021, MoJ responded to Mr E's complaint under stage two of the Scheme's IDR. It said, in summary:-
  - The transfer process for the ReAssure pension was not straightforward as there were multiple steps that XPS needed to undertake before it could accept a transfer-in. Mr E was requesting to transfer a DC plan to a DB scheme, so XPS had to take additional steps before the transfer could be finalised.
  - XPS had completed the transfer-in of Mr E's ReAssure pension within four months, which it thought was a reasonable timescale.
  - The Transfer-In Statement clearly said that ReAssure did not guarantee the transfer value as it was a unit linked policy, so its value could fluctuate dependent on its unit price. The statement showed only indicative benefits and descriptions and ReAssure would only confirm any amount payable at the date of transfer.
  - The transfer could not have completed before 22 March 2020, even if XPS was ready to proceed. ReAssure would not have taken any action until it received Mr E's completed signature verification form. Mr E only sent this form back to ReAssure on 21 March 2020.
  - ReAssure had confirmed to XPS that the notional ReAssure pension transfer value on 22 March 2020 was lower than the final payment it made on 14 May 2020.
  - XPS' level of service regarding the Lloyds transfer had not met its expected standard. It would consult with Lloyds to expedite the transfer.
  - XPS had recognised its delayed acknowledgments of Mr E's Pension Purchase payments. It partially upheld Mr E's complaint against XPS because the standard of service it had given him was poor and, on several occasions, it had issued responses outside its SLA (including its stage one response under the Scheme's IDR).

- Its handling of Mr E's complaint under stage two of the Scheme's IDRPs had fallen below the standard expected as it failed to respond to him in a timely manner.
  - It apologised to Mr E for the poor standard of service he had received and said his experience amounted to a case of serious maladministration. It awarded him £1,000, which XPS and the MoJ would pay jointly, for the distress and inconvenience they had caused him.
45. On 9 December 2021, despite the MoJ saying XPS would expedite the Lloyds pension transfer-in, XPS paid Lloyds the £300 fee for a new Lloyds pension transfer value quotation. This was its first exchange with Lloyds since it asked for a new LOA on 26 May 2021.
46. On 29 December 2021, WTW sent XPS a Lloyds pension CETV illustration which quoted a figure of £19,963.08.
47. On 14 January 2022, XPS sent Mr E the most recent CETV illustration.
48. On 15 January 2022, Mr E returned his completed Lloyds pension transfer forms to WTW.
49. On 25 February 2022, XPS received an amount of £19,963.08 from Lloyds. It calculated this would secure a transferred-in Scheme annual pension of £1,626.80.
50. On 16 May 2022, XPS wrote to Mr E to confirm it had received the transferred-in funds from the Lloyds pension.
51. Following Mr E's application to The Pensions Ombudsman (**TPO**) the following submissions were made.

### **Summary of Mr E's Position**

#### The ReAssure pension transfer

- He returned his ReAssure transfer forms to XPS by 6 March 2020, so he had met the guaranteed requirements set out in its 5 March 2020 letter. He acted in reliance of the legitimate expectation of this guarantee.
- The earliest date that XPS could have requested the ReAssure transfer was 6 March 2020 when he returned his acceptance of the transfer.
- He thought XPS wrote its 5 March 2020 letter in such a way that no reasonable person would have understood it in any other way except that it guaranteed the ReAssure transfer value for two months from 5 March 2020. Given the markets at that time due to the Coronavirus Pandemic, if XPS had not guaranteed the transfer value, then a reasonable person might have waited until they had stabilised.
- He thought the £29,328.01 ReAssure transfer value received and the hypothetical 22 March 2020 transfer value of £27,078.71 were irrelevant because they were



lower than the amount, he considered XPS had guaranteed him in its 5 March 2020 letter.

- He believed XPS should award him £2,000 for the severe distress and inconvenience it had caused him over a two-year period. XPS had repeatedly failed to meet its SLAs, it often failed to remedy its mistakes, which compounded its errors, and it only acted once MoJ had told it to do so.

#### The Lloyds pension transfer

- His complaint about this transfer was a separate complaint to the ReAssure pension transfer complaint. So, XPS' maladministration and the subsequent non-financial injustice resulting from the two transfers should be considered separately.
- XPS failed to progress the Lloyds pension transfer between May 2020 and November 2020. By November 2020, his LOA had expired which led to further delays because XPS had to obtain a new completed form and return it to Lloyds.
- XPS wrongly told him after 18 months that he was unable to make the transfer because he was already drawing an income from the Lloyds pension.
- It took XPS five months to obtain GAD's advice and then another three months for it to obtain a new Lloyds pension CETV illustration. It did not tell him about these issues when they arose. Instead, he only found out after TPO had asked XPS and MoJ to formally respond to the complaints made against them and had sent him copies of the responses it received.
- XPS' delays, incompetence and inaccurate advice put his case at the most serious end of TPO's awards for non-financial injustice. He thought his case was at the exceptional level. It took XPS over two years to complete his transfer and it made numerous errors, which it was then slow to remedy unless he chased them. It breached its own SLAs on multiple occasions.

#### The Pension Purchase payments

- XPS did not promptly acknowledge his payments within its SLA.

#### Offers in recognition of distress and inconvenience

- XPS' offer was only £100. It had not offered him £1,000 as it had indicated to TPO. Instead, MoJ had offered him £500, and only then did it suggest XPS also pay him £500 for the non-financial injustice he had suffered. He believed they should both pay him a higher award.
- XPS had failed to meet its SLAs over a prolonged period, it had not acted until MoJ instructed it to correct the situation, nor had it recognised the inconvenience it caused him.

## MoJ

- He found it unacceptable that MoJ had not substantively responded to his complaint when it gave its formal response to the complaint to TPO. It appeared to have solely relied upon XPS' response, which suggested to him that MoJ had not considered his complaint. In his view, this was a substantial and material failing in respect of the IDRPs.
- He considered the proposed award of £1,000 as reasonable if it was strictly and exclusively related to MoJ's delays.

## **Summary of XPS' position**

### The ReAssure pension transfer

- In its opinion, its delay in requesting the ReAssure pension transfer had not financially disadvantaged Mr E. He received the guaranteed transfer-in factors.
- The Transfer-In Statement noted that ReAssure could not guarantee the transfer value if a policy was unit linked. Mr E's policy was unit linked.
- The Transfer-In Statement also stated that there was a two-month guarantee period and that if Mr E returned the ReAssure transfer acceptance form within two months, it would guarantee the rate of transfer, not the value.
- XPS informed Mr E that if the final ReAssure pension transfer value was higher, or lower, than the initial transfer valuation given, it would proportionately adjust the amount of transferred-in pension.

### The Lloyds pension transfer

- It did not believe that Mr E had suffered a financial loss because of the delays in transferring the Lloyds pension. The actual CETV it received was higher than the 2021 quoted CETV and, consequently, so was Mr E's transferred-in Scheme pension.
- It requested the Lloyds pension CETV on 12 February 2020. This was three days outside of its SLA. Lloyds rejected this request, and it requested it again on 12 April 2020 after obtaining a new LOA from Mr E.
- Unfortunately, Mr E's transfer-in was not progressed until 24 November 2020 when he asked it for an update. It advised him on 1 December 2020 that he needed to complete a new LOA and, on 4 January 2021, Mr E sent it a new completed LOA.
- Lloyds said the notional CETV would have been £18,674.07 as of 25 January 2021. If XPS had received the transfer on that day, it would have purchased a transferred-in pension of £1,548.41 per annum within the Scheme. This pension would have received an increase on 1 April 2021 in line with the Scheme

regulations. The value of Mr E's transferred-in Scheme pension on 7 June 2022 would have been £1,556.15 per annum.

- It accepted that Mr E had experienced delays and inconvenience. It had apologised to him, and previously offered Mr E £1,000 split equally between itself and MoJ.

### **Summary of MoJ's position**

- As XPS had responded separately addressing Mr E's complaint about his transfers-in, it had focussed on his complaint against MoJ's processing of his IDRPs stage two complaint.
- It received Mr E's IDRPs stage two complaint on 23 December 2020 and it acknowledged it on 9 February 2021. It apologised for its delay in doing so.
- The deadline for an IDRPs decision under the process was 23 April 2021. MoJ had to communicate it to Mr E by 8 May 2021.
- Unfortunately, in this period, the MoJ Pensions Administration Team had experienced an increased workload, resource issues and it was training new team members. These issues caused delay in acknowledging and processing Mr E's complaint.
- Consequently, it was not possible for the MoJ Pensions Administration Team to prepare a briefing on Mr E's complaint for consideration by the Judicial Pension Board's Dispute Resolution Committee until 16 June 2021.
- After consideration of the Committee's Recommendations, it sent Mr E an IDRPs stage two decision on 1 July 2021, advising him that his complaint was partially upheld. It added an additional fourth complaint ground about MoJ's delays in handling Mr E's IDRPs stage two complaint. It offered him £1,000 for his distress and inconvenience, split between XPS and MoJ. It also apologised to Mr E for the poor service he had received.
- It accepted that there were delays responding to Mr E about his complaint at each stage of the IDRPs.

### **Adjudicator's Opinion**

52. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by MoJ or XPS. The Adjudicator's findings are summarised below:-

#### The ReAssure pension transfer

- A receiving scheme could not guarantee another provider's transfer value. Mr E had a unit linked policy, so the transfer value was only known on the day ReAssure paid the transfer value to XPS.

- ReAssure would have rejected Mr E's transfer request if XPS had requested it on 6 March 2020 as it would have needed Mr E to verify his signature.
- The Adjudicator agreed that 22 March 2020 was the earliest date XPS could have completed the ReAssure pension transfer.
- The notional transfer value on 22 March 2020 was lower than the amount ReAssure transferred to XPS on 13 May 2020. So, Mr E did not suffer a financial loss.
- The amount of transferred-in pension that would be required to secure £1 of annual pension shown on the Transferred-In Statement was guaranteed for two months. This document stated that if the transfer payment request received from ReAssure in the two months' period was higher or lower than the quoted £33,361.53 then it would adjust Mr E's transferred-in pension amount.
- The Transfer-in Statement and its enclosures made Mr E aware that the quoted ReAssure pension transfer value was not guaranteed and it could be higher or lower than £33,361.53.

#### The Lloyds pension transfer

- It was reasonable for XPS to obtain GAD's advice, and whilst GAD's five month delay in providing its advice was unfortunate, XPS should not be held responsible for this delay. This delay meant Mr E's LOA was out of date and necessitated XPS obtaining a new transfer quotation. XPS paid Lloyds the £300 fee for the new transfer quotation, a cost which ordinarily a customer would have paid, and it offered Mr E an award for the distress and inconvenience it had caused him.
- Mr E did not suffer a financial loss because of his delayed Lloyds transfer as the transferred-in pension secured within the Scheme was higher than the pension he would have secured had his transfer completed in January 2021.

#### MoJ

- Its stage two IDRPs response addressed Mr E's whole complaint. MoJ had considered Mr E's grounds of appeal against the stage one IDRPs decision, and its stage two letter explained its findings. MoJ's position was clear, so it was not necessary for it to reiterate the same points again in its response to TPO.

#### Offers in recognition of distress and inconvenience

- The Adjudicator recognised that Mr E had suffered distress and inconvenience over a long period of time during the transfers of both pensions and in the other matters he complained about. The Adjudicator noted that Mr E had to repeatedly chase XPS throughout both transfer processes.

- An award of £1,000 was appropriate in the circumstances and suitably recognised the repeated errors and delays by XPS. The issues he had investigated did not warrant a higher award in his opinion.

53. Mr E did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr E provided his further comments, which included:-

- The Adjudicator failed to quantify the frequency and extent of XPS' SLA breaches and the number of times that he had to chase XPS.
- The Adjudicator's Opinion did not put sufficient weight on the delay between XPS receiving his transfer requests on 23 January 2020 but not contacting the relevant providers until 12 February 2020. He considered this a four-day breach of its SLA. If XPS had met its SLA, the transfer figures quoted and dates on which the Adjudicator had based his opinion would have been different.
- ReAssure might have honoured a 6 March 2020 transfer request upon receipt of his verified signature.
- The Adjudicator did not place sufficient weight on the wording that he quoted from the 5 March 2020 Transfer-In Statement that the 'amount' was guaranteed, not the 'rate'.
- The Adjudicator's conclusions not to make any additional award and that XPS and MoJ did not need to do anything was perverse and outside the range of conclusions a decision maker could come to. The Adjudicator had not outlined what factors he had considered.

54. I note the additional points raised by Mr E, but they do not change the outcome, I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

55. Mr E complained that XPS' customer service was extremely poor when he transferred his ReAssure and Lloyds pensions into the Scheme. Mr E said that XPS "guaranteed" the ReAssure pension transfer value in its 5 March 2020 Transfer-In Statement. He is also unhappy with its slow acknowledgement of his Pension Payment payments. Mr E believed that XPS should make him an award of £2,000 and MoJ should separately award him £1,000 for the distress and inconvenience he suffered.

56. I find that XPS did not guarantee Mr E's transfer value from the ReAssure pension, and that this would be clear to any reasonable person when reading the documentation as a whole:

- 56.1. XPS sent Mr E the Transfer-In Statement documentation on 5 March 2020. This enclosed "*a Transfer-In Statement quoting the additional benefits which **may be given in exchange for the transfer value of £33,361.53***" (my emphasis). In my view, it is clear from this wording that any benefit offered in the Scheme would

be contingent on the amount of the transfer value actually received from the transferring scheme (i.e. from ReAssure). To the extent that the amount differed from the stated £33,361.53 it is, in my view, clear that the additional Scheme pension would then also change.

56.2. The “guarantee” that Mr E refers to accords with that reading. The wording provides that *“The amount on the enclosed Transfer-in Statement is guaranteed for two months from the date of the statement. **If the transfer payment request is received within two months and is higher or lower than the transfer value quoted above, the amount of transferred-in pension will be adjusted proportionately.**”* (my emphasis). Again, this wording is in my view clear. It specifically alerts the reader that, even if the transfer payment request is received within two months, if it is higher (or lower) than the £33,361.53 mentioned earlier in the letter, then *“the amount of transferred-in pension will be adjusted accordingly”*.

56.3. Mr E points to later wording in the Transfer-In Statement that deals with the “guarantee”. This provides that *“This amount is guaranteed for two months from the date of this statement. If the transfer payment request is received within two months and is higher or lower than the transfer value quoted above, the amount of transferred-in pension will be adjusted proportionately. That means that each £12.02 of transfer value will provide £1.00 of transferred-in pension.”*. Mr E argues that it is the “amount” that is guaranteed, and not the “rate”. However, this wording when read as a whole makes it abundantly clear that the *“amount of transferred-in pension will be adjusted”* (and thus can change) if the *“transfer payment request is received within two months and is higher or lower than the transfer value quoted above”*.

57. Rather, XPS guaranteed, for two months, the way in which it would use the transferred amount to calculate the additional pension to be secured within the Scheme. The Transfer-In Statement showed that Mr E would receive an estimated additional annual Scheme pension of £2,774.58, based on every £12.02 received securing £1 additional pension from the Scheme. For the reasons given above, it was clear that the covering letter confirmed that, if XPS received the transfer payment request within two months, and it was higher or lower (than the transfer value shown), then it would adjust the amount of transferred-in pension.

58. It would in any event not be possible for XPS, on behalf of a receiving scheme, to guarantee ReAssure’s or any other transferring provider’s transfer value. Furthermore, the ReAssure pension was a unit linked policy and so the final value would only be known on the disinvestment date. Mr E had the opportunity to clarify his understanding of the transfer and the 5 March 2020 documentation if he was unsure about them. However, there is no evidence that Mr E checked whether his assumption that the amount of the ReAssure pension transfer value was guaranteed was correct or not.

59. Mr E said that ReAssure might have honoured a 6 March 2020 transfer request upon receipt of his verified signature. This is his opinion, but verification of a member’s

signature is a reasonable requirement in order to process a transfer request.

Therefore, XPS' decision to use a notional transfer date of 22 March 2020 was in my view reasonable.

60. XPS has acknowledged and accepted that Mr E experienced delays and inconvenience. XPS and MoJ partially upheld Mr E's complaint and confirmed that it had offered Mr E an award of £1,000.
61. Mr E has said that he would like each individual delay and error to be assessed when considering an award for distress and inconvenience. He is of the opinion that the level of distress and inconvenience he has suffered warrants an award of over £2,000.
62. The Ombudsman's general guidance on determining the level of awards for pure maladministration following the *Baugniet*<sup>1</sup> case is currently set out in TPO's note: Redress for Non-financial injustice, issued in 2018. Generally, awards of over £2,000 are not made other than in exceptional cases. However, I may depart from the guidance in appropriate circumstances if I consider the circumstances of the case justify this. The level of awards for an appropriate level of injustice is also kept under review.
63. In determining the level of award for non-financial injustice that is appropriate, among other things, I consider the level of injustice sustained; the period over which it is sustained, the number of occasions where it occurred, whether attempts were made to address the maladministration; the impact on the individual and any other aggregating factors. That is the process I have followed in this case.
64. I have reviewed the entire timeline of events, the findings made above and considered the overall impact to Mr E. I note that Mr E has argued that XPS did not meet its SLAs and failed to promptly acknowledge receipt of Pension Purchase payments. However, I also note that some of these breaches took place during Covid, with the associated disruption to administration services (and need to prioritise certain administrative functions over others). Nonetheless, I note that overall, there has been a serious level of distress and inconvenience caused to Mr E. That occurred on several occasions, over a prolonged period and the Respondents were slow to put it right. Accordingly, that puts the level of distress and inconvenience suffered by Mr E in the 'serious' category of the guidance referred to in paragraph 62 above. Accordingly, an award of £1,000 is appropriate.
65. I note that XPS and MoJ have offered to pay Mr £1,000 by way of redress already. However, it has not yet been accepted or paid. As a result, it will be necessary to uphold Mr E's complaint, in part, in order to direct that payment to be made.
66. Therefore, I uphold this complaint.

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<sup>1</sup> *Baugniet v Capita Employee Benefits (Teachers' Pensions)* [2017] 059 PBLR (019)

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## **Directions**

67. Within 28 days of the date of this Determination, MoJ and XPS shall pay Mr E £500 each (a total of £1,000) in recognition of the serious distress and inconvenience caused.

**Dominic Harris**

Pensions Ombudsman  
10 December 2024