

## Ombudsman's Determination

Applicant	Mr N
Scheme	Arla Foods Pension Plan ( <b>the Plan</b> )
Respondents	Arla Foods Pension Plan Trustees Limited ( <b>the Trustee</b> ) Mercer Limited ( <b>Mercer</b> )

## Outcome

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

## Complaint summary

2. Mr N complained that the Trustee did not send him his retirement pack until after his retirement date and, because his retirement date has now passed, he is not being allowed to transfer his pension out of the Plan.
3. Mr N said he suffered stress and lack of sleep due to concern over not being able to transfer his pension and wishes to be compensated for this. He also wanted the Trustee to compensate him for the loss of investment growth that his pension pot experienced, because he was unable to transfer out of the Plan as he planned.

## 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. In May 2021, Mr N reached his Normal Retirement Date (NRD).
6. On 19 May 2021, Mercer, the Plan's Administrator, issued a Pension Retirement Pack to Mr N by post.
7. On 27 May 2021, Mercer wrote to Mr N because he had not been in contact with his Retirement Relationship Manager and details were provided of what to do next.
8. In August 2021, Mr N's Independent Financial Advisor (**IFA**) instructed Grove Pensions Solutions Ltd (**Grove Pensions**) to deal with Mr N's transfer out from the

Plan. The purpose of Grove Pensions' involvement was to deal only with the transfer on behalf of Mr N and the IFA would handle everything else.

9. On 3 August 2021, Grove Pensions submitted a request to the Plan for an illustration of a Cash Equivalent Transfer Value (**CETV**) on behalf of Mr N.
10. On 5 August 2021, Grove Pensions wrote to Mr N's IFA to inform them that Mercer had confirmed that, as Mr N had passed his NRD, he was unable to transfer his benefits out of the Plan.
11. On 17 August 2021, Mr N sent an email to Mercer requesting information in relation to his options. He explained that his advisor had been told that he could not transfer his pension as he had passed his NRD and would like the option to transfer to be given to him as Mercer had failed to send his retirement pack on time.
12. On 19 August 2021, Mercer wrote to Grove Pensions informing it that as Mr N was beyond his NRD, it had to refer his transfer request to the Trustee and that it was still waiting for the Trustee to authorise the transfer.
13. On 10 September 2021, Mr N wrote to Mercer expressing his disappointment that his email dated 17 August 2021 had not been responded to. He gave Mercer seven days to respond with what his options were moving forward.
14. On 22 September 2021, Mercer sent Mr N an illustration of a CETV (the **September CETV Illustration**) including all the forms to complete his transfer.
15. On 24 September 2021, Mr N wrote to Mercer to thank it for enclosing the September CETV Illustration. He requested confirmation as to whether a transfer of his pension would be possible having previously been told that this would not be possible. In the same letter, he informed Mercer that he wished to raise a complaint about the level of service he had received.
16. On 8 October 2021, Mercer wrote to Mr N to address his concerns in relation to transferring his benefits. It said that as Mr N had passed his NRD, he no longer had the statutory right to transfer his benefits. However, following Mr N's IFA confirming that Mr N wished to transfer his benefits, it had sought the Trustee's discretion to provide Mr N with a transfer value. It also said that it apologised if Mr N felt that he had not been kept apprised of the procedure to do this and that he did not receive its correspondence dated 19 August 2021.
17. On 14 March 2022, Mr N wrote to Mercer to request details of the Plan's Internal Dispute Resolution Procedure (**IDRP**) due to the poor service he had received. He then subsequently submitted a complaint.
18. On 22 March 2022, Mercer wrote to Mr N's IFA in response to Mr N's complaint. It said it summary: -
  - It had received correspondence from the IFA where it was looking to investigate a transfer of Mr N's benefits.

- As Mr N had passed his NRD, he was advised that he no longer had the statutory right to transfer his benefits.
  - A subsequent request was received, indicating Mr N was still interested in a transfer and the matter was referred to the Trustee for its discretion to provide an illustration of a CETV. Mr N was notified of this.
  - The September CETV Illustration was issued to Mr N and his IFA on 22 September 2021. To date, it had not received any further correspondence from Mr N or his advisor.
  - Mr N requested a copy of the Plan's IDRPs and a copy was provided.
19. On 28 March 2022, Mercer received Mr N's IDRPs form. Within the statement of complaint, Mr N wrote "you did not send a retirement pack before the normal retirement date".
20. On 12 April 2022, Mercer wrote to Mr N's IFA indicating that it had received Mr N's IDRPs stage one form and had decided to respond to it as a general complaint rather than under the Plan's IDRPs. It asked Mr N's IFA to make clear whether it should treat Mr N's comments as a dispute or not.
21. On 10 May 2022, Mercer wrote to Mr N in relation to his complaint. It said in summary: -
- Once a member passed their NRD, they no longer had a statutory right to transfer their benefits to a new arrangement.
  - It endeavoured to issue normal retirement quotations prior to a member reaching the applicable age under the Plan. Mr N was issued with the associated documentation within regulatory timescales.
  - On 3 August 2021, a request for a transfer quotation was received from Grove Pensions and an acknowledgement letter was sent to Mr N on 19 August 2021. Mr N was advised that the matter had been referred to the Trustee for its approval to issue the requested information.
  - Once Trustee approval was granted, a request was sent to the Plan Actuary to perform the calculation.
  - Mr N said he did not receive its acknowledgement letter relating to his request, which it can only assume was because it was not delivered by Royal Mail.
22. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mr N, Mercer and the Trustee made further submissions that have been summarised below.

### **The Trustee's position**

23. It acknowledged that Mr N did not receive his normal retirement quotation prior to his NRD. The quotation was sent to Mr N 16 days after his NRD. However, Mr N had

been able to claim retirement benefits from the Plan for approximately 17 months (at the time the Trustee submitted its submission) but he had not done so.

24. An illustration of a CETV was requested after Mr N had passed his NRD. The IFA was informed of this but it requested a transfer of Mr N's benefits regardless. This request was referred to the Trustee and it granted permission to issue Mr N his illustration of a CETV.
25. This process was confirmed to Mr N in writing on 19 August 2021, and the September CETV Illustration was later issued to Mr N and the IFA on 22 September 2021.
26. Mr N did not act on the correspondence sent to him, so it was unclear why Mr N felt he had been prevented from transferring his benefits.
27. At no point had it denied Mr N of his right to transfer, and it refuted his claim that it had caused him any mental distress.
28. Mr N had been in possession of his full retirement pack for approximately 17 months, received the September CETV Illustration over 12 months ago (at the time of the Trustee's submission) and had acted upon neither.

### **Mercer's position**

29. Mr N had the option to transfer out of the Plan and had been provided with the September CETV Illustration, but he had not actioned this.
30. It acknowledged that the retirement quote was not issued to Mr N prior to his NRD. It was normal practice to send this but unfortunately due to an oversight it did not send one to Mr N.
31. Mr N had not suffered any loss of investment and his retirement quotation was within disclosure requirements, so it did not consider that any form of compensation was appropriate.

### **Mr N's position**

32. The letter sent by Mercer on 19 August 2021, was sent to the wrong address for the IFA.
33. On 24 November 2021, he wrote to the Trustee requesting clarification as to whether he could transfer his benefits due to the mixed messages he received. This request for clarification was not met by Mercer.
34. He did not receive Mercer's letter dated 8 October 2021.

### **Adjudicator's Opinion**

35. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Mercer. The Adjudicator's findings are summarised in paragraphs 36 to 41 below.

36. The Adjudicator acknowledged that it was disappointing that Mr N did not receive his retirement pack until 10 working days after his NRD. Soon after sending the retirement pack Mercer wrote again to Mr N as he had not made contact with his retirement relationship manager. Mr N did not make contact with his retirement relationship manager, nor did he request for his benefits to be put into payment. So, in the Adjudicator's view the retirement pack being issued after Mr N's NRD did not prevent him from transferring his benefits out of the Plan.
37. The Adjudicator was satisfied that as Mr N's request to transfer out of the Plan came after Mr N reached his NRD, he did not have a statutory right to transfer his pension to another arrangement. The statement made by Mercer of not being able to transfer his pension, was correct. Mr N was informed that despite not having a statutory right to transfer, he could still take a non-statutory transfer, but this required Trustee consent. It was necessary for Mercer to refer Mr N's request to the Trustee for authorisation.
38. After receiving a query from Mr N's IFA as to whether Mr N would be able to transfer his pension, Mercer wrote to Grove Pensions to explain its process. This letter made clear that Mr N would be able to receive a non-statutory transfer out of the plan if the Trustee provided authorisation. The Adjudicator was of the view that as Grove Pensions had the authority to deal with Mr N's pension transfer, Mercer were well within its right to correspond with them on behalf of Mr N.
39. On 8 October 2021, Mercer wrote to Mr N to confirm that his transfer could take place. The Adjudicator noted, having reviewed the correspondence sent from Mercer to Mr N, that the address used on the letters matched the address provided in the application form submitted to TPO. So, considering that Mercer's previous letters were sent and received by Mr N, there was no evidence to suggest that Mercer's letter of 8 October 2021, should not have been delivered in the post.
40. The Adjudicator acknowledged that Mr N said he did not receive the letter dated 8 October 2021. However, as the delivery of correspondence was outside of Mercer's control, the Adjudicator was of the view that Mercer could not be held responsible for Mr N not receiving the letter.
41. The Adjudicator concluded that neither the Trustee nor Mercer, denied Mr N the right to transfer his benefits.
42. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his comments in response to the Opinion, as follows:-
  - He is adamant that the letter of 8 October 2021 was never sent, let alone received. Mercer could not prove that this letter was posted or that it was delivered. He failed to understand why TPO was giving the benefit of doubt to Mercer over him.
  - At the very least he believed he should be compensated for the delay caused by Mercer.

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

### **Ombudsman's decision**

44. It was unfortunate that Mr N did not receive the information that was sent to him on 8 October 2021 in the post. However, it was correctly addressed and there is no evidence that Mercer did not send the letter. On the balance of probability, I find that the letter was posted.
45. Mr N said that as he did not receive the letter dated 8 October 2021, he should receive compensation for the worry and the delay he has suffered.
46. Mercer wrote to Grove Pensions on 19 August 2021 advising that Mr N's transfer request had been passed to the Trustee. Mercer cannot be held responsible if Grove Pensions did not forward this letter to Mr N or the IFA. However, three days later on 22 September 2021, Mercer sent Mr N the September CETV Illustration which would have made Mr N aware of his ability to transfer out of the Plan.
47. I understand Mr N wanted to double check whether this was correct and so he contacted Mercer on 24 September 2021 and Mercer responded to his information request on 8 October 2021. While I accept that Mr N may not have received the 8 October 2021 letter, having contacted Mercer to request further information I would have expected him to have at least followed this up with a further enquiry. Yet he took no further action until April 2022 when he raised a complaint with the Trustee.
48. I find that neither Mercer or the Trustee caused any delay in providing the necessary information to Mr N, nor has either party denied Mr N his non statutory right to transfer out of the Plan. In the circumstances I do not consider that a payment for non-financial injustice is warranted.
49. I do not uphold Mr N's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

1 October 2024