

Ombudsman's Determination

Applicant	Mr R
Scheme	Credit Suisse Group (UK) Pension Fund (the Fund)
Respondent	Credit Suisse First Boston Trustee Limited (the Trustee)

Outcome

1. I uphold part, but not all, of this complaint. To put matters right for the part of the complaint that I uphold, the Trustee shall pay Mr R £500 in recognition of the significant distress and inconvenience caused.

Complaint summary

2. Mr R complained that the Trustee failed to pay him the correct death benefits following the death of his wife, Mrs R. Mr R is represented by Mrs S. Mrs S said that Mrs R made clear her wishes, but the Trustee ignored them in determining the split of the death benefits due. Mrs S also contended that the Trustee was aware of Mrs R's terminal illness so should have made a Serious Ill Health Lump Sum (**SIHLS**) payment.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. Relevant extracts from the rules of the Fund are provided in the Appendix. Pegasus Pensions PLC, act as Chief Operating Officer (**COO**) to the Trustee.
5. In 1987, Mrs R was employed by Credit Suisse.
6. Mrs R had two separate periods of membership in the Fund; from 24 August 1987 to 6 March 1992, and later from 19 July 1999 to 1 May 2007.
7. From 24 August 1987 to 6 March 1992 (**period 1**) and from 19 July 1999 to 31 March 2004 (**period 2**), Mrs R was a member of the defined benefits (**DB**) section of the Fund. From 1 April 2004 to 1 May 2007 (**period 3**), she was a member of the defined contributions (**DC**) section of the Fund (known as the 'DC Plus' section).

8. In 1999, Mrs R had a daughter, Ms S, with her then husband.
9. In May 2007, aged 40, Mrs R left the employment of Credit Suisse and became a deferred member of the Fund. Mrs R's Normal Retirement Age (**NRA**) was 60.
10. In October 2011, Mrs R and Mr R married.
11. On 9 April 2020, Fidelity, the administrators of the Fund, wrote to Mrs R:

“Further to your correspondence with our [DC] team, I understand that you wish to take your retirement benefits early due to serious ill health. In order for us to refer your case to the Trustees for consideration we will require you to confirm your request in writing and also to include a letter from your Doctor confirming your medical condition.

...

Once your request has been received we will forward it to the Trustees for consideration. In the meantime, should you have any other questions, please do not hesitate to contact our office.

...”

12. Unrelated to her April request, in October 2020, the Trustee sent Mrs R two enhanced DB pension transfer offer letters (**the Offer Letters**). As relevant these said:

“You recently received a letter about a one-off enhanced DB pension transfer offer that Credit Suisse and the Trustee of the Fund would like to make available to you for a limited period. This is your offer letter.

The offer is a Credit Suisse initiative which is being implemented jointly by Credit Suisse and the Trustee. Please also refer to the enclosed letter from Credit Suisse about this offer.

Your benefits in the Fund are known as DB benefits. They are based on your salary and the length of time you were building up DB benefits in the Fund.

This offer consists of:

- a one-off, time limited enhancement to the cash value of your DB benefits, known as your “DB transfer value” if you decide to transfer your DB benefits out of the Fund before 14 January 2021; and
- the opportunity to take paid-for independent financial advice about this offer – to help you understand the offer fully and decide whether it is suitable for you.

Support is available This is quite a complex offer. That is why support has been arranged to help you understand how it might impact you. Contact details for WPS Advisory (**WPSA**), the firm of independent financial advisers engaged to support you, are shown above.

...

After taking expert financial advice about your options, the decision you need to make is whether, by taking up the enhanced DB pension transfer offer, you think you could get a retirement income elsewhere that is a better match for your needs.

...

In order to take the enhanced DB pension transfer offer, and once you have taken financial advice, you must fill in and return an [enhanced transfer value] (**ETV**) acceptance form (along with any other paperwork asked for) by 14 January 2021.

- If you have taken advice from [WPSA], they will send you the form and you must return it to them (along with any other paperwork they ask for) by 14 January 2021.
- If you are using your own financial adviser, you will need to request the ETV acceptance form from the Fund's administrator, Fidelity, and return it to Fidelity (along with any other paperwork they ask for) by 14 January 2021.

...

This personalised statement shows...your enhanced DB transfer value if you decide to accept this offer and return your forms and other paperwork by 14 January 2021

...

The table below shows...the one-off, time-limited enhancement that will be added to your DB transfer value if you decide to transfer out of the Fund and return your forms and other paperwork by 14 January 2021;

...

Benefit options outside the Fund – if you take up the offer

Transferring your benefits to another pension arrangement could give you access to more flexible retirement options that are not available from the Fund. There are three core options available from age 55:

- Flexible income (or “drawdown”);
- A different kind of pension for life from an insurance company (known as an “annuity”);
- Cash.

...

From age 55, you could take amounts up to the whole of your enhanced DB transfer value as immediate cash.

...”

13. The Offer Letters confirmed the current values of the DB benefits for period 1:

“Your DB Fund pension at the date you stopped building up DB benefits in the Fund ... - £1,237.50 a year.

Your current DB transfer value (before enhancement) £184,967.72

Your one-off, time-limited enhancement to your current DB transfer value
£18,496.77

Your total enhanced DB transfer value £203,464.49”

14. The Offer Letters also confirmed the current values of the DB benefits for period 2:

“Your DB Fund pension at the date you stopped building up DB benefits in the Fund ... £4,460.42 a year.

Your current DB transfer value (before enhancement) £275,469.15

Your one-off, time-limited enhancement to your current DB transfer value
£27,546.92

Your total enhanced DB transfer value £303,016.07”

15. Furthermore, the Offer Letters gave the current value of Mrs R’s DC benefits, and details of her options, as relevant:

“You also have DC Plus benefits in the Fund. Your DC Plus benefits are not included above. The value of your DC Plus benefits at 7 September 2020 was £35,248.77.

If you decide to take up the enhanced DB pension transfer offer:

- Your DC Plus benefits may also be transferred alongside your DB benefits or you could leave them in the Fund; no enhancement would be applied to your DC Plus benefits;

...

- The value of your DC Plus benefits transferred will be higher or lower than the amount shown because your DC Plus benefits are invested and the value changes based on movements in investment markets.

If you do not take the enhanced DB pension transfer offer, you can transfer your DC Plus benefits, separately from your DB benefits, at any time before you start to draw your DB benefits.”

16. Mrs R took up the offer of paid-for independent financial advice from WPSA.

17. On 1 December 2020, WPSA, on behalf of Mrs R, wrote to Railpen, a specialist DB administration service provider for Fidelity. WPSA said:

“[Mrs R] has terminal secondary ovarian cancer and is currently undergoing trial treatment. Earlier this year she received a [SIHLS] payment from her most recent employer’s defined benefit pension scheme. Please could you provide a quotation for the [SIHLS]s which may be payable from her two sets of benefits in the Credit Suisse scheme. Please would you also detail your requirements in order for [SIHLS]s to be claimed.

As well as the two defined benefits, the member also has a Credit Suisse DC fund, so please could you also include a [SIHLS] quotation and any additional requirements in respect of this fund. Please could you also provide a copy of any ‘expression of wish / nomination’ form you hold, together with a blank copy should an update be required, to cover the interim situation.”

18. On 7 December 2020, Fidelity replied to WPSA:

“Thank you for your email. I have contacted [Mrs R] directly regarding her request for benefits on the grounds of Serious Ill Health.”

19. On 8 December 2020, WPSA wrote to Fidelity as follows:

“...Are you dealing with all three of [Mrs R]’s pension arrangements with Credit Suisse, or just the DC fund? She has two deferred DB pensions and the DC.

As part of the advice process I have received the transfer values for the three pension arrangements, so I can carry out a suitability assessment in respect of possible transfers, but of course I’ll need quotations from the scheme for the [SIHLS] options to compare against the transfer options. Are you able to give me a quotation of those figures before [Mrs R] has to go through the process of providing medical evidence, etc? It may be that the transfer options are more suitable, so I want to ensure that there isn’t a delay.”

20. On 14 December 2020, Fidelity replied to WPSA:

“I can confirm that we are the administrators for both of her final salary records and as she is hybrid member for one of her periods of service, we will be the lead for her DC benefits unless she opts to transfer these funds separately from the DB benefits. In this instance you would need to liaise with the DC Team.

In respect of your request for quotations, I can confirm that such requests are referred to the scheme Trustees. In line with HMRC requirements and the scheme rules, before a Lump Sum payment on the grounds of Serious Ill health can be made we are required to obtain evidence of the members life expectancy.

This can be provided from a registered medical practitioner (i.e. a GP or consultant) along with any additional supporting information that is appropriate in regards to the members diagnosis. [We have] recently contacted [Mrs R] advising her of this.

Once we are receipt of this information, we will forward your request onto the Scheme trustees for their approval.”

21. On 8 January 2021, WPSA replied to Fidelity:

“Further to the email correspondence below, I have spoken to the member again today. She is currently in palliative care and is trying to obtain the medical evidence you require. In the meantime, would it be possible to confirm the basis of how you calculate the benefits on the grounds of Serious Ill-Health? Does the payment of a [SIHLS] preserve or extinguish the spouse’s pension? Do you use the cash commutation factors to convert the pension into the lump sum?”

22. On 15 January 2021, the secretary for Mrs R’s consultant clinical oncologist wrote to Fidelity (Railpen and WPSA were copied in):

“[Mrs R] has contacted us and requires a medical report to access her pension under the grounds of serious ill health.

[The Doctor] would be grateful for a letter requesting the exact information required.
...”

23. On 20 January 2021, Fidelity replied to the secretary for Mrs R’s consultant clinical oncologist, as follows:

“...We require a letter from [Mrs R]’s Consultant informing us of her medical condition and providing us with details of her prognosis and life expectancy, we do not require a full medical history.

I hope that this helps and if you have any further queries, please contact us.”

24. On 5 February 2021, a report with details of Mrs R’s condition was sent to Fidelity and WPSA by Mrs R’s consultant clinical oncologist., who advised “Her prognosis and life expectancy is terminal.”

25. On 10 February 2021, Fidelity forwarded the clinical oncologist’s letter to the Trustee and Law Debenture Pension Trust Corporation plc (**Law Debenture**¹). Fidelity’s covering letter stated, as relevant:

“We have received a request for benefits on the grounds of Ill health for the above member who has two periods of service. I have attached the supporting evidence for the request...

Please could you review and confirm you are happy for us to request [the Fund Actuary] to calculate the benefits for this member?”

26. On 11 February 2021, Law Debenture responded to Fidelity and the Trustee. It said:

¹ Law Debenture was one of the Trustee directors.

“Thanks for sending through the letter from the specialist. I note that the prognosis and life expectancy is terminal. However, the Trustee will require confirmation that the member has a life expectancy of less than 12 months. This is to satisfy the conditions set out in HMRC Pensions Tax manual (PTM063400) and also the Rules of the Fund.

Please could you obtain this further confirmation and please can you also ask the actuarial team to calculate the benefit payable?

Please could you also provide the request from the member for a serious ill health lump sum to add to our case note?”

27. On 18 February 2021, an internal email within Railpen said, as relevant:

“[WPSA] have just called to say [Mrs R] is going to take a transfer out, but has taken a turn for the worse and so its sadly now a race against the clock to make the ETV payment before she passes away.

[WPSA] are awaiting her forms from the member and as soon as received will upload and email us to advise they are there. I have asked them to mark as urgent and flag the reasons why so we don't miss it.

Please can we look out for this email coming in and try to action the payment the same day. I have said we will pay via CHAPS.”

28. On 19 February 2021, Mrs R died.

29. On 8 March 2021, Fidelity received the death certificate, Will, method of payment form, marriage certificate, declaration of marriage form and a Fidelity Information List form (**FIL**) from Mr R. The FIL contained various questions about Mrs R's relatives and dependants.

30. Mrs R's Will (written in November 2015) (**the Will**) referred to Mrs R's daughter (i.e. Ms S), mother, brother, brother-in-law, ex-husband and two stepdaughters, as well as her husband, Mr R. The Will stated that had Mr R pre-deceased Mrs R, Ms S would inherit three quarters of the Estate (and Mrs R's personal jewellery). If Mrs R pre-deceased Mr R, Ms S was left Mrs R's personal jewellery only.

31. On the FIL:-

- Next to “Details of the members immediate family & relatives (e.g. spouse, civil partner, children (or adopted children), grandchildren, parents, brothers and sisters):”, only Mr R's name was entered.
- Next to “Details of anyone who you believe is or may be financially dependent on the member at death (e.g. a long term co-habitee, partner, anyone who may have been receiving financial support from the member at death such as an ex-spouse or child over the age of 18, a disabled child, or who had shared living cost with the member at death)”, “N/A” was written.

- Next to “If the member had been divorced (or had a civil partnership dissolved) — please provide details of the former spouse/civil partner with a contact address”, “N/A” was written.
 - Next to “Details of either any other children of the member not listed above (e.g. born to a previous relationship and where the member is named on the birth certificate of the child) or who the member may have been maintaining (i.e. stepchildren or those of a spouse or partner living with the member at death)”, “N/A” was written.
 - Below the statement “I confirm that the above information is provided is correct and includes all relevant information known to me about the questions asked. I understand that the Trustee may rely on the information provided in making a decision on who should receive benefits from the Fund”, Mr R signed his name.
32. On 6 April 2021, Fidelity wrote to Mr R requesting Ms S’ address and asked whether Ms S was financially dependent on Mrs R when Mrs R died. Mr R replied that Ms S was not currently living with him and “was not financially dependent upon [Mrs R] as she has a full time job, earning over £40,000 a year.”
33. On 22 June 2021, Fidelity wrote again to Mr R and asked for Ms S’ address. Mr R replied that Ms S was living with him at the moment.
34. On 24 June 2021, Fidelity wrote to Ms S (at Mr R’s address) and enclosed a FIL for completion.
35. In reply, Mr R said, as relevant: “...I confirm I gave the letter to [Ms S] and she declined to complete and return it to you. She gave it back to me and told me to deal with it.”
36. On 18 August 2021, Fidelity wrote again to Ms S (then at her own address, provided by Mr R) enclosing a FIL for completion. Around this time, Fidelity also sent FILs to Mrs R’s mother and brother.
37. On 27 September 2021, Fidelity received a letter from Ms S’ solicitor enclosing a completed FIL and a further copy of the Will.
38. The letter said Ms S’ financial position, living arrangements and what she had been left in the Will were such that the Trustee should consider “making provision to [her] for the full sum available under [the Fund]”. Ms S was living with Mr R and Mrs R at the time of Mrs R’s death and following “a breakdown in the relationship between our client and [Mr R] ...was required to vacate the property. [Ms S] understands that [the property] is registered in the sole name of [Mr R] [and] is worth c.£330,000....[Ms S] understands that [Mrs R] received a lump sum payment of £350,000 from her employer in January 2019, when she was diagnosed terminally ill. [Ms S] therefore believes that [Mr R] will be the beneficiary of a significant sum of money.”

39. Ms S said within the FIL that she was financially dependent on Mrs R at the time of her death. She had been left nothing from Mrs R's estate aside from jewellery, whereas Mr R had been left the family home.
40. On 30 September 2021, Fidelity received FILs completed by Mrs R's mother and brother.
41. In October, November and December 2021, as advised by the Trustee, Fidelity continued to liaise with some of Mrs R's family members to help establish which beneficiaries might be eligible to receive some or all of the lump sum from the DC benefits. Specifically, the Trustee wanted to establish whether Mrs R had expressed any wishes regarding provision for any dependants, including in relation to where Ms S might live following Mrs R's death.
42. On 18 October 2021, in correspondence to Fidelity Mrs R's brother said:
- "To my knowledge my sister, [Mrs R] did not express any specific wishes in relation to where her daughter might live following her death. My belief is due to the speed in which my sister's health deteriorated, she didn't truly understand the gravity of her illness even in the last days leading to her death therefore this was not discussed as far as I am aware.
- ..."
43. On 1 November 2021, correspondence from Mrs R's mother to Fidelity said: "I can confirm that my daughter, [Mrs R] did not express any wishes relating to where her daughter [Ms S] might live following her death. It is my belief that she assumed [Ms S] would continue to live with [Mr R]."
44. On 30 November 2021, Mrs S wrote to Law Debenture. Mrs S said:
- "I hate to make contact again but am concerned regarding my son's welfare, physical, emotional and yes, mental.
- After three years nursing his beloved wife, [my son, Mr R] is facing missed deadlines and delays over the matters of [Mrs R]'s pension. It seems that deadlines are given and then repeatedly missed and the effects of this are v detrimental to my son. I do realise that he is only a reference no on a file along w many many others but he was advised that the trustees were discussing the case on the 19 November at a meeting and we were advised yesterday that they now require further info. If this is sought from [Mrs R]'s family it will no doubt involve a further 8 week delay. No-one bothers to update him and he is left in limbo. As we approach 10 months since we lost our beloved [Mrs R], may I ask if there is an end date in sight and also ask if some urgency cd b applied now. Pls help."
45. On the same day, the Trustee replied to Mrs S. The Trustee said:
- "We are sorry that it is taking longer than you or we would have hoped for the Trustee to exercise its discretion with regard to the lump sum death benefit. We

would assure you, on behalf of the Trustee and all involved, that decisions like these are treated with extreme importance but have to be taken with the utmost diligence. The Trustee needs to gather sufficient information regarding a member's personal circumstances, to allow them to make a fully informed decision when exercising their discretion.

A robust process is in place to gather detailed information to identify all potential beneficiaries, and this process is much broader than establishing financial dependency and includes consideration of all family and personal circumstances. Where the circumstances are complicated or where the information provided is incomplete or contains inconsistencies, as was the case here, this has to be investigated and further information gathered.

There is provision within UK tax law for decisions regarding the distribution of lump sum benefits from occupational pension schemes following the death of a member to take up to 2 years, recognising that a member's personal circumstances are not always straight forward and the process can become protracted. We are in no way suggesting that the decision in this matter will take that long, however it is right and proper that the Trustee conducts a thorough process, in order to satisfy themselves that they have received full and detailed information on which to base their decision.

The Trustee understands this is a sad and difficult time for your son and you and we appreciate your patience and understanding in this matter. Fidelity are providing me with copies of the weekly updates that they have sent to your son and, whilst Fidelity has undertaken to continue to update [Mr R] on a weekly basis, we cannot guarantee when this matter will be resolved.

We anticipate that the Trustee will be in a position to make their decision by mid to late December, following responses to the further enquiries they have asked us to make. This is not however a deadline; we will do everything we can to bring this matter to a conclusion as quickly as we can and this will be communicated to your son by Fidelity as soon as they are able to do so."

46. On the same day, Mrs S replied to the Trustee. As relevant, she said:

"...I [would] just like to advise you that the initial forms were not completed by my son as a close friend offered to help as [Mr R] was in a state of severe shock. I was devastated when I read [your] previous reply indicating that in a genuine effort to help [Mr R], his friend omitted vital information which caused a breach of trust. I [have] discussed this with [Mr R] who was unaware. His friend completed the form in an effort to expedite this procedure and, of course, [Mr R] was grateful and signed the forms unwittingly!!! Obviously not quite as helpful as the friend intended. However, we are where we are and obviously v robust investigations are taking place so hopefully, a fair conclusion will be reached.

..."

47. On 3 December 2021, the COO to the Trustee telephoned Mrs R's mother and brother to ask what they believed Mrs R's wishes would have been for Ms S. During the call Mrs R's mother and brother said that at the time the Will was written in 2015, and also at the time of her death, they believed Mrs R had an expectation that Ms S would continue to reside with Mr R until such time that she was able to afford to live independently. However, they said there was a breakdown of the relationship between Mr R's and Mrs R's families soon after Mrs R's funeral, and Ms S moved out of the family home. They said Ms S was working at this time. Aside from the jewellery her mother left her, Ms S had no financial assets of her own, with her car being paid for by a finance agreement.
48. On 21 December 2021, the Trustee made its discretionary decision to distribute the DC lump sum based on the information and supporting documentation it had sought from family members. It decided to award 25% to Mr R and 75% to Ms S.
49. On 7 January 2022, Fidelity wrote to Mr R to inform him that his spouse's monthly pension from the Fund would commence on 1 February 2022 (£130.94 gross) and pension arrears backdated to 20 February 2021 would also to be paid. These payments were in respect of period 2 of Mrs R's pensionable service.
50. On 24 January 2022, the Trustee wrote to Mr R to inform him that a spouse's pension totalling £2,613.48 per year was payable to him from 19 February 2021. This pension comprised £1,043.64 in respect of period 1, plus £1,569.84 for period 2. It would be paid to Mr R for his lifetime and would increase annually in line with the Fund rules. The Trustee said it had no discretion over who the DB benefits were payable to and could only pay the benefits permitted under the Fund rules. The Fund Actuary calculated the approximate cost to the Fund of the DB spouse's pension payable to Mr R from age 48 to be £171,395. It confirmed it was not possible to take this as a transfer (cash) value.
51. With regard to the DC death benefits Mrs R had accrued, the Trustee said in this letter:

"The Trustee only has discretion over how the DC death benefits are payable. This is a much smaller portion of your wife's overall benefit value and relates only to Credit Suisse's pension contributions paid to the Fund between 1 April 2004 to 1 May 2007.

When exercising its discretion in respect of lump sum death benefits, the Trustee has a duty to ensure they gather sufficient information regarding a member's personal circumstances, to allow them to make a fully informed decision about distributing the benefits between one or more of the eligible beneficiaries.

The Trustee will:

- consider any expression of wishes made by a member before they died, making it clear to the Trustee who they wish to receive any lump sum death benefits

- gather and consider relevant information relating to the deceased's personal circumstances and potential beneficiaries (as defined within the Fund's Rules). This is broader than establishing financial dependency; it includes gaining an understanding of a member's personal and family circumstances, any living relatives and their relationship to the deceased
- make appropriate enquiries and ensure that they have all the relevant facts before making a decision.

Members are encouraged regularly to update their expression of wish forms and submit these to the Fund Administrator to ensure that in the event of death, the Trustee can be made aware of their wishes, however Fidelity has confirmed that in the case of your late wife, there was no Expression of Wish held on file.

The process of gathering information here took longer than you or we would have expected. We have explained (and asked Fidelity to convey) that decisions like these are treated with extreme importance, and must be taken with the utmost diligence. Where the family circumstances are complicated or where the information provided is incomplete or contains inconsistencies, as was the case with the forms initially submitted (which indicated you as the only living relative), this had to be investigated and further information gathered from other family members.

I am not permitted to disclose personal details of any other beneficiaries.”

52. On 26 January 2022, Fidelity transferred £43,873.89, representing the DC death benefit lump sum payment, to a Credit Suisse Group UK bank account.
53. On 4 February 2022, Fidelity wrote to Mr R and confirmed it had made a payment of £10,968.47 to him from the Fund. This represented his share of the DC death benefits lump sum.
54. On 30 March 2022, WPSA wrote to Mr R and Mrs S in response to a complaint they had made against it. As relevant, WPSA said:

“You raised a complaint and accused [WPSA] as being responsible for the pension transfer not being completed due to its gross incompetence and malpractice.

...

WPSA was appointed by the Trustee of the Credit Suisse pension scheme (the scheme) to provide retirement planning advice to its members.

...

[Mrs R] contacted us on 6 November 2020 to arrange an appointment....The following week, [Mrs R] informed WPSA that she had been diagnosed with terminal cancer. As a result, this was escalated internally and her case with prioritised which led to contact the following day, 16 November 2020.

...

[SIHLS] quotes were requested from the scheme on the same day as [Mrs R]'s first appointment with her adviser, 1 December 2020. Such assessments are considered and made on an individual basis by the scheme and on the basis of information provided to the scheme and as such that part of the process is outside of the control of the adviser. Due to scheme rules, requirement for a medical report and to internal scheme processes outside the control of WPSA, these failed to materialise. During this period, WPSA continued to push the scheme for the requested quotes and liaised with [Mrs R] in relation to obtaining the medical report required.

...”

55. On 14 February 2022, Mr R made a complaint under the Fund's Internal Dispute Resolution Procedure (**IDRP**).
56. On 25 April 2022, the Trustee issued its decision to Mrs S. With regard to the DB benefits, the Trustee said:

“...The member's [DB] entitlement is to the benefit – not to the assets which the Trustee may hold to secure the future payment of that benefit.

...

When a member dies, before or after retirement, the Rules allow only for a pension to be paid to surviving dependants: most often the member's spouse or partner. Under the rules of workplace pension schemes, dependant benefits are almost always set at a level which is substantially lower than the benefit which the member would have received in their own right. These benefits are personal to the dependant and the entitlement cannot be passed on to anyone else. The Trustee had no discretion to pay this [DB] pension to any other beneficiary than [Mr R].

...

The Fund has to hold a very substantial portfolio of assets to be confident of paying the pensions due to the average membership, retiring at 60 and expecting to receive an inflation-adjusted pension for perhaps 30+ years. The fact that expected investment returns are currently so low has further increased the capital reserves which must be held. For the average member with similar age and salary history as [Mrs R], this amount would be in excess of £500k, including a reserve to allow for Trustee prudence in assumption setting. This was reflected in the [ETV] offered to [Mrs R] in October 2021.

As I explained earlier, the Rules of the Fund dictate that for a member dying before retirement, the spouse's pension is lower than that which the member might ultimately have expected. However, this pension is also payable from an earlier date than the scheme member would have become entitled to their own pension – in this case an additional 12 years. The reserves that must be held for the spouse's pension are lower than for the member's but nonetheless substantial. In this case, while [Mr R]'s (spouse's) pension may seem small at the outset, the Scheme

Actuary has calculated the value of the reserve required to provide it over [Mr R]'s lifetime to be c.£171k based on the same standard actuarial assumptions as used for the Fund as a whole. Neither HMRC nor the Rules of the Fund allow it to be paid to [Mr R] as a lump sum, rather than a pension.

HMRC regulations also do not allow for a pensioner member or one in receipt of a spouse's or other dependant's pension to transfer out. It is for this reason that [Mr R] was informed that we could not pay out the present value of the spouse's pension, regardless of [Mrs R]'s last wishes.

The estimated figure is payable in instalments as a pension. It cannot be taken as a cash lump sum as you suggest as the Fund Rules and tax laws do not allow this. Any benefits which are not paid in accordance with tax legislation may be subject to a 55% tax penalty and the Fund's Rules do not allow the Trustee to make these payments.

... your expectations as to benefits which might be available were genuinely, understandably, but incorrectly, raised by the coincident ETV exercise which highlighted the value of the benefit which [Mrs R] was tragically never able to enjoy.

...

We understand [Mrs R] took up the paid-for advice with the independent financial adviser (IFA) appointed to support members with the offer. Sadly, the COO to the Fund learned from the IFA on 19 February 2021 that, although she had intended to take up the offer, she was unable to complete the formalities as she had passed away overnight, following a sudden deterioration in her condition.

...

The death benefits payable in respect of [Mrs R]'s two periods of DB membership (periods 1 and 2) are mandatory – the Trustee cannot pay different benefits nor pay to someone else, and [Mrs R]'s wishes are not relevant to this benefit. Both spouse's DB pensions were (and are) payable to [Mr R], as set out above. No benefits were payable to anyone else in respect of these periods of membership.

The Fund Rules do not allow the Trustee to pay any other benefit to [Mr R].”

57. With regard to the DC benefits, the Trustee said, as relevant:

“Only the DC Fund ...is a discretionary benefit. When deciding how to pay a discretionary benefit, the Trustee can consider any expressed wishes of the deceased but is not required to follow them.

No expression of wish (nomination form) was held by the Fund and therefore the Trustee sought information from [Mr R] as her next of kin to understand her personal and family circumstances including requesting details of other relatives.

...

Where no expression of wish is held for a member it often means the process of exercising discretion takes longer. I understand Fidelity and the COO have explained that delays were incurred due to incomplete information being provided by [Mr R] on the personal circumstances form; he omitted to mention any of [Mrs R]'s own relatives. It is explained (in [Mr R]'s supplementary page to his IDR complaint) that a friend completed the original form for him. The omission meant we were unable to make a decision on the information presented and therefore we asked Fidelity to make further enquiries with other parties to obtain this information independently and to investigate apparent discrepancies.

The process took longer than we would like as a result and included seeking additional clarity and asking follow-up questions. Additional information conveyed by yourself and [Mr R] in calls and emails to Fidelity was also passed to the Trustee for consideration.

We hope that you and your son appreciate the Trustee has a duty to investigate personal circumstances thoroughly to allow us to make a fully informed decision about distributing the benefits between one or more of the eligible beneficiaries and where information provided is incomplete or contains inconsistencies, as was the case here, this must be investigated, and further information gathered. It is difficult to put a timeframe on making a decision in the circumstances described.

One area that did not operate as it should was the setting up of [Mr R]'s second DB pension. This should not have been delayed, as a result of the delayed Trustee discretion. We understand it was set up (and backdated to the date of [Mrs R]'s death) in January once the Trustee exercised their discretion in relation to the DC lump sum. We apologise for this delay and we have, as a result of this, asked Fidelity to review their process.”

...

We are extremely sorry for your loss and regret the distress that this misunderstanding over the [DB and DC] benefits payable has caused to your son, yourself and [Mrs R]'s family. However, the Trustee is unable to uphold the IDR complaints made.”

58. Following the complaint being referred to The Pensions Ombudsman, Mrs S and the Trustee made further submissions that have been summarised below:-

- Mrs S said that the Trustee was made aware of Mrs R's terminal illness in November 2020 and so should have paid a SIHLS before she died.
- The Trustee said it found out about Mrs R's serious ill health on 10 February 2021 “at which point every effort was made to co-ordinate all parties to expedite her chosen option (to transfer) under the [ETV] exercise...”.

59. On 1 August 2023, Independent Trustee Services Limited (**ITS**), part of the Independent Governance Group (**IGG**), took over as sole Trustee and Trustee Chief Operating Officer of the Fund.

Mr R's position as represented by Mrs S

60. Mrs S, on behalf of Mr R, submits:-

- Mr R was awarded £10,968.47 from Mrs R's DC pension, plus approximately £200 per month pension from her DB benefits. He should receive the full ETV plus 100 per cent of her DC benefits, which he estimates to be approximately £550,000. Mrs R had contributed to her pension for many years in the certain knowledge that Mr R would receive all death benefits. The Trustee has disregarded Mrs R's wishes and Mr R wants to know where the rest of the fund has gone.
- He would like the £171,395 actuarial calculation of the value of his spouse's pension paid to him as a lump sum.
- Mr R believes Ms S was left approximately £30,000 from the DC funds. This was against Mrs R's wishes.
- Mr R gave up work for three years to nurse Mrs R and was financially dependent on her and the carers allowance.
- The Trustee was made aware of the seriousness of Mrs R's illness in November 2020 and the payment of the SIHLS should have gone ahead before she died. Mrs S provided a letter dated 30 March 2020 from WPSA which confirms this date and that Mrs R had engaged WPSA to begin the transfer process.
- Mr R's friend, not Mr R, completed the FIL which failed to include details of any of Mrs R's other relatives.

The Trustee's position

61. The Trustee submits:-

- The two DB period death benefits payable are not discretionary and can only be paid to Mr R as the spouse, no one else. Only the DC benefits are discretionary.
- No expression of wish form was completed in respect of the DC benefits.
- £171,395 was an estimate of the capital value of the spouse's benefits. It is payable to Mr R in instalments as a pension, and in line with the Fund rules and tax rules. This amount cannot be paid to Mr R as a lump sum.

- The ETV would have had to be paid to another pension arrangement in Mrs R's name, and could not be paid to Mr R.
- Legally, the Trustee is not permitted to pay out higher benefits than those payable under the Fund Rules (or an equivalent cash value or lump sum).
- The second DB pension (period 2) was not set up until January 2022 but was backdated to April 2021. This delay was linked partially to the extra time needed to investigate the DC benefits form Mr R completed which excluded Mrs R's other relatives. The DB benefits should not have been delayed as a result of the extra time needed for the DC benefits discretionary decision-making. The Trustee has apologised for this and instructed Fidelity to review its process.
- Mrs R's DB pension was non-contributory.
- The Trustee was only made aware of Mrs R's serious ill health on 10 February 2021.

Adjudicator's Opinion

62. Mr R's complaint was considered by one of our Adjudicators. The Adjudicator concluded that it should be partly upheld, and the Trustee should pay Mr R £500 in recognition of the significant distress and inconvenience which he has suffered. The Adjudicator's findings are set out below:-

SIHLS

- The process of pension benefits being commuted to a SIHLS could begin once a registered medical practitioner provided written evidence that a member had a life expectancy of less than 12 months. This is an HMRC rule as well as being set out in the Fund Rules.² (see Appendix).
- A letter dated 1 December 2020 from WPSA advised Railpen that Mrs R had been diagnosed with terminal cancer and asked what was required from Mrs R for SIHLS to be claimed. Fidelity responded to WPSA on 7 December 2020 and said it had responded directly to Mrs R regarding the matter. Fidelity also wrote to WPSA on 14 December 2020 and confirmed that evidence of Mrs R's life expectancy was required from a registered medical practitioner in order that a request for SIHLS could be made for Trustee approval.
- On 20 January 2021, Fidelity replied to an email from the Secretary to Mrs R's clinical oncologist asking what medical information was required from it for Mrs R to access her pension under the grounds of serious ill health. Fidelity confirmed a full medical history was not required but details of Mrs R's prognosis and, crucially, her life expectancy were. However, when Mrs R's clinical oncologist wrote to the Fund administrators on 5 February 2021, they advised that Mrs R's

² <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063400>

“life expectancy was terminal” but did not indicate that the timescale was less than 12 months.

- The Adjudicator said that because “life expectancy” specifically means an estimate of the length of time a person is expected to live, the Trustee’s approval for a SIHLS payment could not be requested at that time.
- Mrs R, her advisers WPSA and Mrs R’s oncologist were made aware of the requirement for a medical practitioner to confirm her life expectancy in writing. WPSA also confirmed that Mrs R had received a SIHLS payment from another of her employers in 2020, which indicated that she and her advisers were aware of the process and what medical evidence was required to make a SIHLS claim. There was no evidence or claim that written confirmation from a medical practitioner that Mrs R’s life expectancy was less than 12 months was provided to Fidelity or the Trustee before Mrs R’s death, so, in the Adjudicator’s view, this aspect of the complaint could not be upheld.

ETV and DB benefits

- Mr R said he should be paid the ETV of Mrs R’s pension fund set out in the October 2020 Offer Letters to Mrs R. However, correspondence from WPSA in December 2020 and January 2021 indicated that Mrs R and her advisers had considered the transfer out but had decided to proceed with the SIHLS claim instead. In the Adjudicator’s view, there was no evidence or claim that Mrs R or her advisers returned the relevant forms to indicate she wanted to accept the ETV before, or after, the 14 January 2021 deadline.
- Mr R also contended that he should be paid the Fund Actuary’s approximate estimate of how much the total cost to the Fund was of paying the spouse’s pension to him (£171,395).
- The Fund Rules (see Appendix) set out how pension benefits for a spouse of a deferred member, who died before NRA and before their pension commenced, should be paid. The Rules are clear that this benefit must be paid as a pension. So, in the Adjudicator’s opinion, there was no provision within the Rules for the Trustee to pay the spouse’s pension as a lump sum.

DC benefits

- In order to exercise its discretion as to who the DC benefits should be paid, the Trustee took into account Mrs R’s death certificate, Mr R and Mrs R’s marriage certificate, Mr R’s birth certificate, the four FILs, telephone notes from the Trustee’s conversations with Mrs R’s mother and brother, the letter from Ms S’ solicitor, and the Will. In the Adjudicator’s view, the Trustee had sufficient information to make a considered decision about how the DC benefits should be distributed and followed the Fund Rules to reach its decision. In the Adjudicator’s opinion, the Trustee thoroughly assessed all the available evidence against the Rules. Its decision to split the DC benefits 75%-25% between Mrs R’s daughter

and Mr R was within the range of possible decisions which a reasonable decision-maker could have reached on the facts of the case.

- However, in the Adjudicator's view, the Trustee provided no justification why the spouse's pension benefits from Mrs R's DB pensionable service took 12 months to be put into payment. The benefits were paid from February 2022, backdated to February 2021. The Trustee had acknowledged the DB spouse's pension could have commenced before the decision on the DC benefits was taken. In the Adjudicator's opinion, this delay would have caused Mr R additional upset, and the Trustee should pay Mr R £500 in recognition of this.

63. The Trustee accepted the Adjudicator's Opinion. Mrs S, on behalf of Mr R, did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S has provided further comments which are summarised below:-

- Mrs R bequeathed her £550,000 pension pot to Mr R. The Trustee did not adhere to her wishes and has not offered an acceptable answer as to why.
- Mrs R did not wish her daughter to receive any of her pension benefits as she had made other provision for her.
- How was the figure of £500 distress and inconvenience reached?

64. I have considered Mrs S' comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

65. While I have sympathy for the parties involved, a trust based occupational pension scheme, such as the Fund, can only pay benefits in accordance with its governing documentation (i.e. the Fund's trust deed and rules).

66. In this case, the rules of the Fund set out what benefits were payable on the death of a deferred member (and these are different to the benefits that might be payable on the death of an active member of the Fund, or on the death of a member whose pension has already come into payment). Ultimately, I am satisfied that the benefits payable on the death of Mrs R have been properly considered and paid.

67. As the Trustee has explained, those benefits differ from the transfer value offered to Mrs R in October 2020 as a part of the ETV exercise and as set out in the Offer Letters. The £550,000 "pension pot" figure referred to by Mrs S approximates the combined DB enhanced transfer values, totalling £506,480.56, plus the fund value in the DC Plus Fund. Mrs S, on behalf of Mr R, said that this amount should have been paid to her son following Mrs R's death. However, the rules of the Fund do not make provision for that whole "pension pot" to be paid on the death of a deferred member.

68. As explained in the Adjudicator's Opinion, the ETV as set out in the October 2020 Offer Letters could have been paid in respect of Mrs R had the relevant forms been

returned to the Trustee before 14 January 2021. However, they were not. These offers related to a potential transfer to another pension scheme. There is no provision within the Fund rules, and no reference in the Offer Letters, to anyone other than the member, Mrs R, being eligible to receive the ETV.

69. Separately, there was also some discussion between Mrs R's advisers and representatives of the Fund as to whether a SIHLS could be paid. A SIHLS is payable to members with a life expectancy of less than 12 months. Only Mrs R, as the member, not Mr R, could have been an eligible recipient of the SIHLS. However, evidence of Mrs R's life expectancy was not provided by a medical practitioner to the Trustee before her death. I have seen no evidence that this was due to any errors or delays on the part of the Trustee.
70. As a result, the benefits payable were those available on the death of a deferred member. In respect of the DC arrangement, the fund of approximately £40,000 was payable as a lump sum at the discretion of the Trustee in accordance with the rules of the Fund.
71. Mrs R had not provided the Trustee with an expression of wish form in respect of the DC fund. Although the Trustee would not have been obliged to follow this when exercising its discretion, it would have allowed Mrs R to express her own wishes as to how that amount should be distributed on her death. In the absence of that, the Trustee, and the 'COO' on behalf of the Trustee, went through a fact-finding exercise to ascertain the potential beneficiaries of the lump sum and their circumstances – which was entirely proper.
72. The Trustee then considered the information received as a result of that exercise - including Mrs R's death certificate, Mr R and Mrs R's marriage certificate, Mr R's birth certificate, the four FILs, telephone notes from the Trustee's conversations with Mrs R's mother and brother, the letter from Ms S' solicitor, and the Will. It is clear to me that the Trustee has taken all relevant matters into account in exercising its discretion and making its decision. The Trustee has not considered any irrelevant matters and I have seen no evidence of any flaws in the decision-making process.
73. The Trustee made its decision to pay Mr R 25% of the DC fund, with the remaining 75% being paid elsewhere. The Trustee could have made a different decision in respect of the split of DC benefits, and paid more or less of the DC benefits to Mr R. However, the decision made by the Trustee is in my view within the range of possible decisions which a reasonable decision-maker could have reached on the facts of the case. So, I find the evidence does not support a finding that the Trustee's decision was perverse.
74. Although the distribution of the DC benefits was at the absolute discretion of the Trustee, the same is not true of the DB benefits. There was no provision within the Fund Rules for either the £506,480.56 ETV, the SIHLS, or the £171,395 actuarial calculation of the value of the spouse's pension, to be paid to Mr R as lump sums as

Mrs S contends. Instead, the Trustee has, properly, paid Mr R a spouse's pension in accordance with the rules of the Fund.

75. The £171,395 is an estimate of the actuarial cost to the Fund of the spouse's pension which Mr R is in receipt of. The spouse's pension will be paid to Mr R in instalments until his death in accordance with the Fund rules and cannot be taken as a one-off lump sum.
76. Awards for non-financial injustice are intended to acknowledge the distress and inconvenience that applicants have suffered as a result of errors made.³ Although no errors by the Trustee have been identified in respect of the issues complained about, there was a delay in the commencement of the spouse's pension benefits payable to Mr R. I find that this warrants a payment of £500 in recognition of the significant distress and inconvenience caused as a result of the delay.
77. I partly uphold Mr R's complaint.

Directions

78. Within 28 days of the date of this Determination, the Trustee shall pay Mr R £500 in recognition of the significant distress and inconvenience caused to him.

Dominic Harris

Pensions Ombudsman
4 September 2024

³ https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/Updated-Non-financial-injustice-September-2018-2_0.pdf

Appendix

Extracts from the Rules of the Credit Suisse Group (UK) Pension Fund

General Rules

1. As relevant, Rule 8, 'Payment of lump sum death benefits', provides:

"The Trustees will pay any lump sum death benefit to one or more of the Beneficiaries within such period as is consistent with the payment being an "authorised member payment" for the purposes of section 160 of the Finance Act 2004. If the Trustees decide to pay the benefit to more than one of the Beneficiaries, they will pay it in such shares as they decide.

The "**Beneficiaries**" are:

- (i) the Member's widow or widower or surviving civil partner;
- (ii) the Member's and his or her spouse's or civil partner's grandparents and their descendants and the spouses, civil partners, widows and widowers and surviving civil partners of those descendants;
- (iii) Dependants of the Member;

- (iv) Pensionable Children of the Member;
- (v) any person with an interest in the Member's estate (but not including the Crown, the Duchy of Lancaster or the Duke of Cornwall);
- (vi) any person or charity nominated by the Member in writing to the Trustees;
and
- (vii) any person whom the Trustees consider to have been in a close, long-standing relationship with the Member.

The Trustees may use all or part of the amount payable for the benefit of one or more of the Beneficiaries, instead of paying it direct to the Beneficiaries concerned.

...

However, no lump sum death benefit will be paid if there are no surviving Beneficiaries when the Member dies.”

2. As relevant, Rule 14, ‘Discretionary benefits, provides:

“14.1 Serious ill-health lump sums

It may be that the Trustees receive evidence from a registered medical practitioner that a Member is expected to live for less than one year. If this happens before the Member starts to receive benefits from the Scheme, the Trustees may allow the Member to give up all of his or her benefits under the Scheme in return for a lump sum. However, this will be allowed only if payment of a "serious ill-health lump sum" is permitted under Part 4 of the Finance Act 2004 and the Contracting-out Laws.

The Trustees will calculate the lump sum after considering advice from an actuary. This choice will not affect any pensions payable on the Member's death.

Note: The Finance Act 2004 permits payment of a "serious ill-health lump sum" only if any benefits payable on the Member's death are first moved to a new arrangement within the Scheme. The Trustees will record the creation of this new arrangement as they think fit.”

Schedule 1 – Special Rules relating to the DC Plus Section

3. As relevant, Special Rule 6, ‘Benefits on Member's death’, provides:

“6.3 Benefits after leaving Service and before benefits commence

If the Member dies after leaving Service with preserved benefits and before starting to receive benefits under the Scheme, the Trustees will use the Member's Retirement Account to provide benefits in one or more of the following forms:

6.3.1 - a lump sum payable as described in General Rule 8 (payment of lump sum death benefits);

6.3.2 - a pension or pensions payable to one or more of the Member's spouse, civil partner, Pensionable Children and Dependants as described in Special Rule 7 (payment of survivors' pensions).

In applying the Retirement Account the Trustees may take account of any wishes expressed by the Member.”

Schedule 6 - Special Rules relating to Credit Suisse First Boston Section

4. As relevant Special Rule 8, 'Pensions for spouses and civil partners', provides:

“8.3 Member dies with a preserved pension that has not started

If the Member dies before Normal Retirement Date with a preserved pension that has not started:

8.3.1 - the spouse's or civil partner's pension in respect of the Member's Pensionable Service before 6 April 1997 will be equal to 1/160th of the Member's Final Pensionable Salary for each complete year of Pensionable Service or, if greater, the spouse's or civil partner's GMP.

8.3.2 the spouse's or civil partner's pension in respect of the Member's Pensionable Service on or after 6 April 1997 will be equal to 1/160th of the Member's Final Pensionable Salary for each complete year of Pensionable Service after 6 April 1997 but will not in any event be less than the limited pension as described in Special Rule 8.4 (limited pension).”

5. As relevant, Schedule 6, Special Rule 8, 'Pensions for spouses and civil partners', provides:

“8.3 Member dies with a preserved pension that has not started

If the Member dies before Normal Retirement Date with a preserved pension that has not started:

8.3.1 - the spouse's or civil partner's pension in respect of the Member's Pensionable Service before 6 April 1997 will be equal to 1/160th of the Member's Final Pensionable Salary for each complete year of Pensionable Service or, if greater, the spouse's or civil partner's GMP.

8.3.2 the spouse's or civil partner's pension in respect of the Member's Pensionable Service on or after 6 April 1997 will be equal to 1/160th of the Member's Final Pensionable Salary for each complete year of Pensionable Service after 6 April 1997 but will not in any event be less than the limited pension as described in Special Rule 8.4 (limited pension)."