**PO-19743**

# Ombudsman's Determination

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| Applicant | Mrs N |
| Scheme | Standard Life Staff Pension Scheme (the **Scheme**) |
| Respondents | The Trustees of the Standard Life Staff Pension Scheme (the **Trustees**) |

## Outcome

1. I do not uphold Mrs N's complaint and no further action is required by the Trustees.

2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs N has complained that contrary to the assurances she received from the Trustees before requesting a cash equivalent transfer value (**CETV**) in June 2016, she was not able to request a further CETV on 6 September 2016.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only referred to the material facts which have led to my conclusions. I acknowledge there were many other exchanges of information between all the parties.

5. Mrs N was a deferred member of the Scheme, which closed to future accrual in April 2016.

6. Due to the conflicting information about the CETV process in various Scheme documentation, Mrs N's husband who was also a deferred member of the Scheme and her representative, called Mercer, the administrator of the Scheme, on 16 May 2016. Among other things, Mrs N's husband was informed that they would be able to request another CETV following the expiry of the three-month guarantee period.

7. On 6 June 2016, Mrs N requested a CETV (the **Original Request**). A transfer value amount of £601,000 was guaranteed until 6 September 2016.

8. During the guarantee period of the Original Request, the value of Mrs N's benefits increased significantly, and could be viewed on the online portal (the **Portal**). Mrs N also became aware that the Trustees were only allowing one CETV in any 12 month

period. Mrs N contacted Mercer in July and August about this. On 5 July 2016, Mercer informed her that she would be able to request another CETV free of charge once the current one had expired.

9. On 8 August 2016, Mercer emailed Mr N to confirm that the "Trustees of the [Scheme] have reverted to allowing members to obtain only one guaranteed transfer value quotation in any 12 month period, all as per set out in the Scheme Handbook issued to all members". In addition, Mercer confirmed that members cannot pay to receive an additional CETV within the relevant 12 month period; a completed transfer application form must be received within the three month guarantee period for the transfer to proceed; and members cannot elect to transfer out after the expiry of the guarantee period on the basis of a non-guaranteed amount.

10. On 16 August 2016, Mr N emailed the Secretary to the Trustees on his and his wife's behalf and asked why the change in policy/practice regarding CETVs had not been communicated directly to members, and why the change was not being implemented after a suitable and reasonable notice period. Mr N said the changes to the Scheme has made a very significant hole in their retirement planning and that he did not think he was being unreasonable in seeking to minimise the impact, by having the flexibility to choose when to take their fund if that was what they chose to do. Mr N asked that consideration be given to their circumstances and for confirmation that they would be able to request a further CETV when their current one expires 6 September 2016. Mr N said they would be happy to pay for the additional quote.

11. The Secretary responded to Mr N on 25 August 2016. The response said as records showed Mrs N was in receipt of one CETV which was issued less than 12 months ago, the Trustees cannot grant another request. Mr N was informed that they could initiate the Scheme's formal complaint process.

12. On 6 September 2016, the transfer value quoted for Mrs N's benefits by the Portal was £781,000.

13. On 22 September 2016, Mrs N submitted her complaint under the Scheme's internal dispute procedure (**IDR**), although, she was still awaiting some additional information from the Trustees which she believed would support her complaint.

14. On 21 October 2016, the Secretary to the Trustees emailed Mrs N's husband in relation to their request for telephone recordings of her calls with the Scheme administrator. The Secretary said: "We have heard recordings of these conversations and acknowledge that [the administrator] did inform you incorrectly, that a new Guaranteed Transfer Value would be available if you allowed the one you had in your possession to expire". The Secretary went on to say that the Trustees' response would take account of this misinformation.

15. On 31 October 2016, Mrs N's former employer issued a notice informing deferred members that the Trustees had agreed to its request to waive the limit on issuing more than one CETV in any 12 month period (the **Notice**). The Notice said under the

terms of the Scheme, it was the Trustees' policy that each member is limited to one CETV in any 12 month period, to protect the benefits for the remaining members and to meet administrative demands. However, it had been recognised that many people were unaware of this limit and some members had found themselves unexpectedly unable to transfer out after guaranteed periods lapsed. The Notice said eligible members who received a CETV with a calculation date between 1 March and 30 September 2016, and had not yet transferred out of the Scheme, would be able to apply for an additional CETV before 30 November 2016, without having to wait for 12 months. This was referred to as the Transfer Amnesty. The Notice said a CETV calculated as part of the Transfer Amnesty would be calculated using the yields applying as at the date of calculation, but that the precise date of the calculation will not be guaranteed and could be between October 2016 and January 2017.

16. On 23 November 2016, the Trustees issued their stage one response to Mrs N's IDR complaint. It said its policy was to offer members one CETV in any 12 month period which was in line with statutory requirements. The Trustees apologised if the information given to her had been misleading. The Trustees explained that it exercised its discretion following changes to the transfer value basis in March 2016. The change meant that all members were able to request a quote on the new basis regardless of when they had received a quote on the old basis. The CETV issued to Mrs N in June 2016 was on the new basis. The incorrect information given to Mrs N by the administrator does not override the policy. Consequently, the Trustees did not uphold Mrs N's complaint.

17. The Trustees enclosed the Notice about the Transfer Amnesty and informed Mrs N that she was eligible to request a new CETV under the terms of the amnesty. In recognition of the fact that Mrs N may have put her transfer plans on hold on the expectation she could receive another CETV, the Trustees offered to honour the expired CETV from the Original Request.

18. Mrs N expressed her disappointment with the IDR decision on 24 November 2016. Mrs N said her circumstances were quite unique in that she expressly checked on the availability of a further quote and as had been confirmed, she was informed that this would be available. Mrs N did not consider that the IDR decision fully acknowledged this, as the email of 21 October 2016 had. Mrs N subsequently appealed the stage one IDR decision on 1 February 2017. The stage two decision was issued on 7 April 2017. Mrs N's appeal was not upheld but she was offered £50 to recognise the "drop in service" she had received.

19. After making a final attempt to resolve matters to her satisfaction, Mrs N complained to The Pensions Advisory Service (**TPAS**) and then brought her complaint to the Ombudsman. Mrs N's position is that:

    - she was advised that she could request further CETVs at the end of the guarantee period;

- after she acted on the basis of this promise; the Trustees changed their policy and reneged on the promise;
- she has been financially disadvantaged as a result and she considers the actions of the Trustees to be morally and ethically wrong;
- the Trustees should have fulfilled their promise to allow her further quotes from 6 September 2016, or put her back in the position she would have been in prior to receiving the promise, namely, allowing her the option of further quotes from the date they reneged on their promise;
- as a former employee, she signed up to the Company's Code of Conduct which talks about how doing the right thing is more than just complying with the letter of the law, but about keeping promises and acting in a trustworthy manner at all times, she feels very let down and dismayed that she has not been treated in line with these values;
- the Scheme rules in relation to CETVs have not been communicated or applied consistently;
- there is significant inconsistency across the wording of Scheme documents and associated information from other sources;
- the Trustees have failed to keep members up to date with appropriate and important information about the Scheme;
- the Trustees have failed to make good on their commitment to act in the best interests of the Scheme members and uphold the underlying principles of the freedom and choice in Pensions Legislation.

20. The Trustees' confirmed its position to TPAS in a letter dated 13 October 2017 and said:

- The Trustees' policy remains that only one CETV is available in any given 12 month period. This is in line with statutory requirements and is explained in Scheme literature.
- The Trustees were aware that the Scheme administrator gave incorrect information in telephone conversations with Mrs N by advising that a new CETV would be made immediately available upon the expiry of one previously in force.
- The information given by the administrator may have altered the expectation of what Mrs N might receive from the Scheme. This expectation was subsequently corrected and the Trustees' policy was communicated correctly, prior to the expiry of the existing CETV.
- Having taken legal advice, the Trustees concluded that the incorrect information given by the administrator did not create a verbal contract which gave the right to another CETV within 12 months.

- A new CETV was issued to Mrs N through the Transfer Amnesty exercise in November 2016 but Mrs N did not proceed with the transfer.
- Mrs N has not been denied her statutory right to receive a transfer value from the Scheme.
- The Trustees have already accepted that the information provided by the administrator should have been accurate at the outset and have apologised for that mistake. Having reconsidered the impact this service failing has had, the Trustees would be prepared to increase their without prejudice offer to £500.

## Adjudicator's Opinion

21. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-
    - The Adjudicator considered that Mrs N's complaint is broadly similar to the complaint of Mr T (PO-15467) which was determined on 30 March 2017. The Adjudicator did not consider that there were any reasons why Mrs N's complaint should be treated differently so the findings of the Determination for Mr T constituted the Adjudicator's view on Mrs N's complaint.
    - In the Determination for Mr T, it was decided that the wording of a questions and answers sheet on transfers – sent by the Trustees – ought to have been clearer about the policy. It was reasonable for Mr T to have relied on the information and conclude that he would be able to request further CETVs within 12 months. Consequently, he was entitled to be put back in the position he would have been in, had the Trustees' policy been communicated clearly. The Trustees offered to do this.
    - In offering to honour the original CETV beyond the guarantee date, the Trustees put right any injustice which may have flowed from the unclear communication.
    - The Trustees justified their policy on the basis that they were trying to achieve consistency between affected members.
22. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness.

## Ombudsman's decision

23. Mrs N strongly believes that there are compelling differences that would preclude her complaint from being treated in the same way as Mr T, these are summarised below:-

    - Unlike Mr T, she had not concluded that she intended to accept the original CETV from June 2016. This is confirmed by her independent financial adviser (**IFA**) who confirmed that requesting a CETV prior to the Brexit referendum vote was prudent given the economic uncertainty. The IFA confirms that it was Mrs N's intention to only proceed with the transfer if there was a negative outlook following the vote.

    - Mrs N only chose to proceed with the Original Request after checking her understanding and her options with Mercer, and receiving an explicit promise.

    - She was not put pack in the position she had been in before she acted on the incorrect information. Had she been she would have been free to make an informed decision on the basis of the change in Policy where she had not yet made a decision to request quotes. Mrs N asserts that this should have taken place from the time Mercer confirmed the Policy on 8 August 2016.

    - Had she been aware of the Policy before the Original Request, Mrs N says her actions would most likely have been different. The Trustees' offer to honour the June CETV did not put her back to the position she was in prior to receiving the advice from Mercer. This is very different from the circumstances of Mr T.

    - Mrs N says she cannot say what her decision would have been had she known the true position. If following the Brexit referendum the outlook for CETVs had been negative, she may have chosen to proceed with the transfer, or have decided to delay things further and review the economic situation on an on-going basis.

24. There is no dispute that Mercer gave Mrs N incorrect information about the Policy. This amounts to maladministration. However, it is an established legal principle that the provision of incorrect information does not, in itself, create a legal entitlement for the recipient to receive those incorrect benefits. On the basis of this principle, Mrs N did not have an automatic right to request a new CETV from the date Mercer confirmed the Policy to her on 8 August 2016.

25. As maladministration has occurred, the normal course of action would be to try and put Mrs N back into the position she would have been in had the mistake not occurred. Mrs N does not accept that this has happened.

26. Mrs N made the Original Request on the expectation that she would be able to request further CETVs, on the Original Request's expiry. The Policy was confirmed before the expiry and Mrs N did not proceed with the transfer.

27. Had Mercer given her the right information in May 2016, I consider that Mrs N would most likely have proceeded to request a CETV prior to the Brexit referendum vote in

June 2016. It was a time of great uncertainty, and as her IFA confirmed, having a CETV was a prudent step to take.

28. In essence, Mrs N has asserted that from August 2016, the Trustees should have disregarded the Original Request, so that she would have been free to make a new request at a date of her choosing. The chosen date being on the expiration of the current CETV in September 2016. The purpose of redress is not to find the most financially advantageous remedy for the injustice.

29. In this case, I am satisfied that providing Mrs N with the opportunity to request a further CETV under the Transfer Amnesty was sufficient redress to put her in the position she would have been in, had she been given the correct information about the Policy. This is in light of her assertion that she thought it prudent to have a CETV prior to the Brexit referendum vote. Mrs N was incorrectly told that she could receive more than one CETV in a 12 month period, and the Trustees allowed her to make a further request. I do not find that the Trustees should have backdated Mrs N's request to September 2016. The terms of the Transfer Amnesty were clear and applied to all eligible members equally.

30. I do not consider that Mrs N has suffered an actual loss but I consider that she has suffered a loss of expectation as a result of the incorrect information she received. I have noted the Trustees offer of £500. In the circumstances, I consider this to be a reasonable amount to pay in recognition of the distress caused. If Mrs N wishes to accept this offer, it will be for her to contact the Trustees to confirm this.

31. Therefore, I do not uphold Mrs N's complaint.

**Anthony Arter**
Pensions Ombudsman

11 June 2018