

Ombudsman's Determination

Applicant	Mr Y
Scheme	Hewden Pension Plan (the Plan).
Respondents	Mercer, Open Trustees Limited (Open Trustees)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Mercer or Open Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y complains that Mercer provided him with misleading information in relation to a transfer value quotation, which resulted in a misunderstanding as to what options he had to transfer his benefits out of the Plan.
4. Mr Y has also said that, because he did not transfer out of the Plan and because his employer, Hewden Stuart later went into administration, which triggered the Plan's entry into an assessment period for the purposes of the Pension Protection Fund (**PPF**) - the options available to him are now more restricted.

Background information, including submissions from the parties

5. On 1 October 1988, Mr Y joined the Plan.
6. On 26 January 1991, Mr Y left pensionable service. Mr Y's benefits under the Plan were calculated as £240.36 per annum including £70.72 per annum in respect of his Guaranteed Minimum Pension (**GMP**).
7. In 2015, Mr Y contacted Mercer requesting details of how much his Plan benefits would be worth if he transferred to them to another pension scheme.
8. On 17 November 2015, Mercer issued Mr Y with a transfer value quotation. The total transfer value available at that time was £29,994.00 (including £14,523.00 in respect of his GMP). The quotation confirmed that the transfer value was guaranteed until 6 February 2016, and his guaranteed amount would be lost and he would not be

allowed to apply for a further guaranteed transfer until 12 June 2016. At the time, Mr Y was not in a position to proceed with the transfer and as such he did not return the relevant forms to Mercer.

9. On 22 November 2016, Hewden Stuart entered into administration and the Plan entered into PPF assessment period. The option to transfer was not available as the terms and conditions of the PPF did not allow transfers to be paid once the assessment period had started.
10. In early 2018, Mr Y requested an early retirement quotation from Mercer.
11. On 6 February 2018, Mercer wrote to Mr Y confirming that it was not able to put an early retirement pension into payment during the PPF assessment period, as the amount of the early retirement pension payable to him at age 55 would not be sufficient to cover his GMP. Therefore, in accordance with PPF guidance, it would not be possible to provide him with an early retirement quotation during the Plan's PPF assessment period.
12. On 9 February 2018, Open Trustees were appointed sole trustees of the Plan.
13. Mr Y complained to Open Trustees under the Plan's Internal Dispute Resolution Procedure (**IDRP**) about the fact that he could not be provided with an early retirement quotation.
14. On 21 June 2018, Open Trustees issued their IDR stage 1 response to Mr Y's complaint. They did not uphold Mr Y's complaint and said that the transfer out quotation clearly explained that the guaranteed amount was only available until 6 February 2016 and that Mr Y would need to return the relevant forms to Mercer before that date in order to transfer out the guaranteed amount. As he did not return the application form by 6 February 2016, he lost the right to transfer out the guaranteed amount.
15. Open Trustees were also of the opinion that Mr Y had sufficient time to request a new transfer out quotation after 12 June 2016 (the date from which he could have requested a new transfer out quotation); and, that he could have raised queries regarding the information provided in that transfer out quotation in order to decide whether to transfer his Plan benefits before the Plan entered its PPF assessment period on 22 November 2017. Open Trustees confirmed that following the Plan's entry into its PPF assessment period, they were under an obligation to ensure that all benefits were paid in line with PPF rules. As such, they were under a legal obligation not to issue transfer out quotations whilst the Plan was in a PPF assessment period. Further, PPF guidance provides that Open Trustees should not put a pension into payment which does not cover a member's GMP.

Adjudicator's Opinion

16. Mr Y's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Mercer or Open Trustees. The Adjudicator's findings are summarised briefly below: -
- As Mr Y did not return the transfer paperwork by 6 February 2016, he lost the right to transfer out the guaranteed amount, in line with the relevant legislation. The Adjudicator was of the opinion that Mr Y had sufficient time to request a new transfer out quotation after 12 June 2016; and, that he had sufficient time to raise queries regarding the information provided in the transfer out quotation in order to decide whether to transfer out before the Plan entered its PPF assessment on 22 November 2017.
 - Open Trustees were not allowed to issue transfer out quotations whilst the Plan was in a PPF assessment period. Further, PPF guidance provided that Open Trustees should not put a pension into payment which did not cover a member's GMP. In addition, it was unlikely that the Plan rules would have allowed for payment of an early retirement pension that did not cover the member's GMP, even if the Plan was not in the PPF assessment period.
 - Open Trustees could not pay out a transfer value in respect of Mr Y's pension entitlement under the Plan. As it had entered into the PPF assessment period, the Plan had to be administered in accordance with the PPF terms and conditions. One of those conditions was that the PPF did not allow transfer payments to be made in respect of any liabilities of a scheme which it is assessing or has accepted.
17. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

18. Mr Y says, he trusted Mercer to look after his pension. I agree with the Adjudicator that, because the early retirement pension was insufficient to cover the GMP, the fact that the Plan was in the PPF assessment period is irrelevant, i.e. even under normal circumstances, the value of his Plan benefits are currently not high enough to allow him to take early retirement.
19. After a transfer out quotation was issued to Mr Y in November 2015, he did not return the forms to Mercer promptly, in order to proceed with the transfer out. Nor did he contact Mercer to raise any queries regarding the transfer amount or process. As such, once the deadline of 6 February 2016 expired, he lost the right to transfer out the guaranteed amount set out in the quotation.

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20. I sympathise with Mr Y. I understand that he feels that he has done nothing wrong and that Mercer is “profiting” from his pension. However, the Plan cannot pay out a transfer value in respect of Mr Y’s pension entitlement whilst it is under PPF assessment. This is in line with PPF’s terms and conditions.

21. Therefore, I do not uphold Mr Y’s complaint.

Karen Johnston

Deputy Pensions Ombudsman
30 January 2019