

Ombudsman's Determination

Applicant	Mr S
Scheme	AXA UK Unfunded Unregistered Retirement Benefit Scheme (the Scheme)
Respondent	AXA UK Group (AXA)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by AXA.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S's complaint is that AXA told him that he could transfer the unfunded benefits in the Scheme, then reduced the cash equivalent transfer value (**CETV**).

Background information, including submissions from the parties

4. Mr S accrued benefits in the Scheme between 11 January 1999 and 31 July 2000. On leaving service he had a pension entitlement of £4,043.88 per annum from the Scheme, payable from aged 60, revalued in line with limited price indexation between the date of leaving service and age 60.
5. AXA has said that the Scheme was, "an unfunded contractual promise to provide specified benefits at retirement".
6. In July 2016, Mr S requested a Transfer Quote. The CETV for the Scheme benefits was quoted as £179,137, with a calculation date of 15 July 2016 and an expiry date of 15 October 2016.
7. In September 2016, Mr S' financial adviser raised some tax queries with AXA concerning the transfer of the unfunded benefits.
8. In December 2016, Mr S raised a formal complaint regarding the time taken to respond to the tax queries. At the same time Mr S told AXA that he no longer wished to proceed with the transfer of the unfunded benefits, but wished to have the tax

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information for future reference. He instead asked AXA if he could take the benefits from the Scheme as a cash lump sum.

9. AXA has said that the tax queries raised several complex issues and, as a result, it had to seek professional advice and also raise an enquiry with HMRC.
10. In May 2017, after obtaining answers regarding the tax issues, AXA sent a Lump Sum Quote to Mr S. This quote gave Mr S the option of taking the unfunded benefits as a one off lump sum of £127,000.
11. Mr S' adviser questioned why the amount had reduced. In an email response dated 29 June 2017, AXA said:

“Since the original transfer value for the unfunded benefit was issued in 2016 we have undertaken a review of the factors underpinning the calculation. As a result the revised figure is, as you note, lower. This reflects the fact that this is an unfunded obligation with a financial value place [sic] on it by the company rather than calculated using the transfer value basis of the trustee which reflects a funded scheme, the security of the Pension Protection Fund and underlying investments/capital. I recognise the financial change this makes to the transfer value but note that the company is not required to offer a transfer value or constrained to the terms used by the pension trustee.”

Adjudicator's Opinion

12. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by AXA. The Adjudicator's findings are summarised briefly below: -
 - The expiry date for the first quote passed, so it was reasonable for AXA to review its calculations before providing another quote.
 - AXA is not obliged to offer a transfer quote for unfunded benefits.
 - Whilst AXA did take some time to respond to tax questions, it was not its role to advise on this area, and Mr T could, himself, have obtained tax advice.
13. As Mr S did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr S' further comments, summarised below, do not change the outcome. I agree with the Adjudicator's Opinion and my decision in response to the key points made by Mr S, is set out below.

Summary of Mr S' comments

14. Mr S's receiving scheme could not accept a transfer from an unfunded scheme, so reference to a CETV was misleading and AXA should have clearly set out the option for a lump sum.
15. AXA did not deal with his queries within acceptable standards.

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16. Mr S believes AXA used incorrect factors for the initial calculation, given the dramatic change to transfer values.
17. Mr S notes that for funded schemes a member must be notified if the transfer value alters by more than 10% from the original offer.
18. It is not reasonable to expect the member to seek professional tax advice as AXA was prepared to offer an unfunded benefit for employees, it should also carry the responsibility of understanding the tax treatment
19. Although not part of his original complaint, Mr S was unhappy with a delay in the transfer of his funded benefits from AXA.

Ombudsman's decision

20. Given the unfunded nature of the Scheme, AXA is not obligated to provide a transfer or lump sum equivalent to the benefits. However, it chose to provide these and can calculate the equivalent value of the unfunded benefits at its discretion.
21. Mr S is unhappy that AXA provided a CETV when his receiving scheme could not accept a transfer of unfunded benefits. It is for the receiving scheme to decide whether to accept a transfer of benefits, of any kind. Decisions made by a third party receiving scheme are not known to AXA and it is not responsible for researching this. AXA was asked for a CETV and it provided one.
22. The CETV had a three month window for acceptance and the original quote was guaranteed for this period. Given that Mr S did not accept the CETV by the deadline, AXA is not required to honour the first quote.
23. Mr S has said that AXA had a responsibility to notify him of any change to the original quote of more than 10%. However, I am not aware of any legislation that would require this for a transfer of scheme benefits.
24. AXA was within its rights to review the calculation, especially given that it was first asked for a CETV then later a Lump Sum Quote.
25. Mr S' adviser raised some tax queries with AXA concerning Mr S' potential tax liabilities. As tax is a personal responsibility, it was not AXA's role to obtain advice on Mr S' tax queries. I do not consider that AXA is obliged on Mr S' behalf, to obtain professional tax advice at its own cost and make enquiries of HMRC.
26. In his response to the Adjudicator's Opinion, Mr S raised a complaint regarding the transfer of his funded benefits from AXA. Given that this was not part of his original complaint to this Office I will not comment on this.

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27. I do not uphold Mr S' complaint

Anthony Arter

Pensions Ombudsman
16 March 2018