

The complaint

Mr K seeks to transfer his Defined Benefits Pension ('DBP') to a personal pension-based arrangement. He says – he left the employment associated with the DBP around 1996; thereafter, unknown to him and without his consent, his DBP was moved between different providers; around 2020 he learnt that Rothesay Life Plc ('Rothesay') is the current provider; and in 2024 he sought to pursue the DBP transfer but was obstructed by Rothesay.

He mainly alleges that – the change of provider to Rothesay happened without his knowledge, Rothesay has mismanaged his DBP fund (leading to underperformance affecting its Cash Equivalent Transfer Value ('CETV')), and it has unreasonably stopped him from transferring the DBP.

Rothesay disputes the complaint.

What happened

Rothesay's position is mainly as follows –

- Mr K's DBP scheme went to *buy-out* and was acquired by Scottish Equitable/Aegon, after which his DBP undertook a deferred annuity status (as the scheme's trustees purchased a deferred annuity for him). Aegon transferred part of its annuity business, including his DBP/deferred annuity, to Rothesay in 2017. Its notice to clients at the time [a copy of which has been shared with us] confirmed this and informed clients that the transfer had been approved by the High Court on 15 June 2017 (effective 30 June 2017). The transfer happened under Part VII of the Financial Services and Markets Act 2000 ('FSMA').
- Mr K's allegation of mismanagement is fundamentally misguided. Rothesay did not acquire a pension fund for him. No pension *fund* or pension investment existed. Furthermore, no fixed pension value was ever transferred. What transferred, between Aegon and Rothesay, was the guaranteed pension *benefit* that Mr K had accrued in the DBP (an annual pension payment sum that continues to be revalued in line with the terms of the DBP scheme). This benefit has no connection with an underlying investment. The same applies to the CETV. It is no more than a calculation of the costs of providing the guaranteed benefit based on market conditions at any relevant time. It does not refer to an investment value or to the cash value of a benefit.
- The CETV quotes it previously provided Mr K, upon his requests, were relevant in the context of transferring out the DBP. However, based on Rothesay's policy terms he could only pursue such a transfer up to his 65th birthday. This term was/is more generous than the statutory entitlement to such transfers under pensions regulations, which sets the deadline at 12 months before the 65th birthday (so, up to the 64th birthday). Mr K was repeatedly informed of Rothesay's deadline for transfer applications in the following correspondence – retirement quote packs sent to him, upon his requests, on 16 July 2020 and 22 November 2021; transfer packs sent to him, upon his requests, on 29 June 2023 and 7 December 2023; and the two packs sent to him (on 4 February and 26 April 2024) about his normal retirement date

approaching and about his options (inclusive of a transfer). He applied for a transfer after his 65th birthday, so he was and is out of time.

One of our investigators looked into the complaint and concluded it should not be upheld. Thereafter, further dialogue/correspondence ensued between him and Mr K, during which he elaborated on his findings, but overall his conclusion remained the same.

Parts of the investigator's view noted many of the same points that Rothesay highlighted. He explained the nature of Mr K's DBP/deferred annuity, the nature of the changes in provider under Part VII of FSMA (including the transfer to Rothesay in 2017) and the fact that the changes did not require his agreement to happen. The investigator also explained that Rothesay had no pension investment management role, given the circumstances of the DBP/deferred annuity, that the guaranteed annual pension benefit is what it provides and that the benefit has no correlation with a pension fund or a pension fund valuation. With regards to Mr K's DBP transfer pursuit, the investigator was satisfied that he had prior notices of the 65th birthday deadline, that the deadline was more generous than his statutory entitlement and that his application in 2024 was late, so Rothesay was/is not obliged to accept it (and, in the circumstances, its refusal to do so is not unreasonable).

Mr K disagreed with this outcome and asked for an Ombudsman's decision. In the main, and with regards to the complaint findings, he said the investigator had been unduly dismissive of (and had trivialised) his distinct allegation about mismanagement, was biased towards Rothesay's interests in the complaint and had failed to properly consider the extenuating circumstances he presented in relation to his incapacities in the matter. He also said he was prevented from agreeing the terms and conditions being used against him and that his transfer application was made only five weeks over the deadline, so Rothesay should have accepted it.

The investigator addressed Mr K's comments, but his (Mr K's) request for an Ombudsman's decision remained, so the matter was referred to an Ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I have reached the same conclusion expressed by the investigator. I do not uphold Mr K's complaint.

There are three strands to the complaint – Mr K's concern about his DBP having been passed between providers without his knowledge/consent (including the result, as he sees it, that he is now being subjected to Rothesay's terms despite not agreeing them); his allegation that the DBP's value (or CETV) was adversely affected by Rothesay's mismanagement; and his dissatisfaction with Rothesay refusing his transfer application.

The investigator helpfully explained, in his views, how the scheme buy-out and DBP/deferred annuity came about, how it was transferred to Rothesay under Part VII of FSMA and how it was possible for that to happen without a requirement for Mr K's agreement. Mr K appears to understand the explanations, and whilst he nevertheless maintains that transfer of the DBP to Rothesay happened without his consent, his main contentions appear to relate to the alleged underperformance and DBP transfer issues.

Neither Mr K's original DBP scheme nor Aegon (or, if different, the counterparty in the buy-out) is party to the present complaint. Either might or might not be the respondent to any complaint he has about his DBP being initially transferred from its original scheme without

his knowledge/consent – and I make no finding on this – but Rothesay is not such a respondent, because Rothesay was not involved in the buy-out. If, other than the buy-out, he has an issue with any aspect of Aegon’s action in transferring the DBP/deferred annuity to Rothesay, the fact that Aegon is not party to the complaint remains a factor that prevents addressing such an issue.

As far as Rothesay’s receipt of the transfer is concerned, available evidence is that the transfer happened from Aegon’s part-sale of its annuity business (including the DBP/deferred annuity) and that it happened with High Court approval under Part VII of FSMA. As the investigator explained, this did not require Mr K’s *consent*. If it further aids his understanding, more information on such transfers can be obtained on the GOV.UK website, amongst other sources, at the following link – <https://www.gov.uk/hmrc-internal-manuals/life-assurance/lam13030>. The information here includes the following –

“Summary of the process for FSMA 2000/Part VII of transfers

Transfers of insurance business essentially transfer the contract that has been agreed between the insurer and the policyholder to another insurer without the need to obtain the policyholder’s consent ...” [my emphasis]

The next strand of the complaint is the underperformance allegation. In this respect, I do not consider there is more I can meaningfully add to the explanations that the investigator, and Rothesay before him, have given to clarify that the allegation is without a basis in the reality of the DBP/deferred annuity.

I support and echo the essence of those explanations by stating the following – the guaranteed pension income from the DBP/deferred annuity (revalued as explained by Rothesay) was its core benefit; that was calculated and mainly based on Mr K’s final salary under the original scheme, it was not based or reliant on investment or pension fund performance; so Rothesay did not acquire a pension ‘fund’ for Mr K (there is no evidence that such a fund existed or was transferred); it is not a matter of being unduly dismissive about his allegation; it is a matter of the allegation being devoid of a factual basis; in other words, I do not have grounds to consider the allegation of pension fund mismanagement where no pension fund was managed by Rothesay for Mr K.

With regards to his transfer application, copies of the communications (between 2020 and 2024) that Rothesay has cited were shared with him. In response, he did not dispute them, but he has referred to incapability related circumstances which he expects us to view as extenuating factors in considering his actions. On balance, I disagree.

The retirement and transfer quotes packs sent to him in 2020, 2021 and 2023 were sent upon his requests, so his capability to make those requests serves as ground to conclude, on balance, that he was probably capable, at the relevant times, to act upon the packs he received. I do not say or suggest that because he made the requests he was obliged to act on the packs, he was not, but the implications are that he was probably capable of doing so and that he was at least aware of the contents of the packs.

As he says, he made his transfer application around five weeks after he turned 65, in 2024. The correspondence Rothesay sent him in that year was sent two to four months before he turned 65. In this context, his action in making the application is evidence of relevant awareness and capability on his part around the time of his 65th birthday, and I have not seen reason why the packs sent to him a few months before that should be excluded from this period of awareness and capability. Both the 2024 packs, sent before Mr K’s 65th birthday, gave the following same notice in relation to transfers –

“You can request a transfer pack including a guaranteed transfer value at any time up to your 65th birthday providing you have not already started to take your benefits.”

Both the 2023 packs gave the following same notice –

“Our current policy is to offer transfer values to policyholders who are not already receiving payment of their benefits and are under age 65.”

The 2020 and 2021 packs both included – *“Our current policy is to offer transfer values up to age 65, to those who are not already receiving payment of their benefits.”*

It is worth noting that the first four packs arose from Mr K’s enquiries into the DBP’s retirement and transfer quotes and that the last two were issued to inform him of his options as he approached his normal retirement date/his 65th birthday. In these circumstances, he ought reasonably to have been informed, and reminded over time, by the repeated references to his 65th birthday being the deadline for transfer applications and for the offering of transfer values. Therefore, he could have acted on this information in time and, as addressed above, he was probably capable of doing so.

Mr K made his application after his 65th birthday, so the application was too late under Rothesay’s policy and it was not obliged to accept it. The investigator quoted, and referred him to, guidance from the Pensions Regulator stating that the statutory entitlement to transfer DBPs exists up to one year before the DBP scheme’s normal pension age. In Mr K’s case that age was 65, so the statutory entitlement expired at age 64 so, as has been put to him, Rothesay’s policy gave him more time than the minimum entitlement.

For the above reasons, I do not consider that there is any wrongdoing in Rothesay’s position on the transfer application.

My final decision

For all the above reasons, I do not uphold Mr K’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 13 May 2025.

Roy Kuku
Ombudsman