Public Employees Pension Fund

Committee of Management

Committee of Management's Member Communication regarding Complaints Panel findings: as at 7 September 2022

- The Committee of Management (the "**Committee**") of the Public Employees Pension Fund (the "**PEPF**") is a body of twelve unremunerated volunteers who, together with the Chairman and Scheme Secretary of the PEPF, work with the Treasury and Exchequer Department (as Administrator of the PEPF) to manage the PEPF in accordance with applicable legislation. The Committee is advised by several professional organisations, including lawyers, actuaries, investment advisers, governance advisers and auditors.

- The Committee wishes (by this statement) to reassure members of the PEPF - in light of recent findings of the Complaints Panel and various press reports associated with the Complaints Panel's report - about its treatment of a transfer value for a former member of the PEPF.

- The Committee's view is that some of this coverage is misleading and, in some instances, simply wrong. This statement is intended to put the Committee's position on the record.

- The complaint raised by the former member of the PEPF in 2018 is not new. The Committee considered this matter was closed some time ago but in light of continued comment in the media, the Committee feels that it has no choice but to make its position clear.

Summary

- The Complaints Panel's findings were in response to a complaint raised by a former member of the PEPF in connection with the transfer of that member's benefits out of the PEPF in 2018.

- The complaint related to whether or not a verbal transfer value request or enquiry was made by the complainant's manager, on the complainant's behalf, in the weeks prior to 1 May 2018. There is verifiable evidence of such a call made after 1 May 2018 but not before. The reason this has become contentious is because the transfer value quotation which the member received (and acted upon) was lower in value than if it could have been verified that a request for the quotation had been made prior to 1 May 2018.

- It is important to emphasise at the outset that the complaint was not about the calculation of the member's earned pension entitlement based upon his service, but about how that future entitlement should be valued in current money upon his having decided to leave the PEPF.

- As a matter of good governance, the PEPF's Administrator ordinarily requires a member to deal personally and in writing in respect of all matters relating to her or his benefits. In particular, again for good governance and confidentiality, the Administrator does not usually accept communications from third parties (such as a member's colleague or line manager) on a member's behalf.

- However, given the fact that in the early part of 2018 a temporary hold had been placed on transfer value quotations (for the reasons set out below), the Committee agreed, for the sake of fairness, to apply previous, higher, transfer values where a member seeking a quotation had duly requested that, in writing or by telephoning to the Administrator, before the changeover date of 1 May 2018.

- In the case in question, there was no verifiable evidence that such a request had been made before 1 May. That is to say, no verifiable evidence was made available to the Committee, and, as it turned out, no evidence was before the Complaints Panel either. The Panel was content to accept the hearsay that the complainant’s line manager had duly made a call to the Administrator, despite technical evidence from JT (provided in fact by the complainant on his line manager's behalf) that there was no record of a call from the manager's office to the Administrator. Given that, it would have been totally wrong, in the Committee's view, for the Committee to have treated the complainant as if he or his manager had made a call before 1 May.

- The Complaints Panel’s hearsay finding is thus not accepted by the Committee. The Panel’ report also contains a number of unhelpful and untoward comments about the Committee and its decision in relation to the complaint, some of which have surfaced in the press.

- While the Committee is established by statute, it exercises certain of its statutory powers as if it were a body of trustees. That is to say, it must have regard to and exercise its powers in the best interests of all the members of the PEPF, who number over 16,000 (touching perhaps a third or more of all households in Jersey).

- Consistency and fairness of treatment of all, within a framework of good governance and pursuant to the legislation which governs the PEPF, is paramount. All twelve members of the Committee, who undertake their work voluntarily, take this duty most seriously. The Committee is led and supported by the Chairman and Scheme Secretary respectively, who are remunerated given the large time commitment and expertise required.

- The Committee is independent of the Government and must act according to the statutory provisions which govern the PEPF. The principle of law underpinning this is that PEPF assets are members’ deferred pay, to be used to provide pensions and other benefits to those retiring from public service. They are not at the disposal of the Government. It was not clear from its report that the Complaints Panel understood this most fundamental point.

- The Treasury Department administers the PEPF in accordance with the statutory provisions which govern the PEPF. This activity is wholly funded by the PEPF under agreed management arrangements.

- The pension scheme in question (which forms part of the PEPF and is often referred to as the ‘PECRS') is not a ‘traditional’ defined benefit pension scheme where the duty lies on an employer to make good any deficits or shortfalls in funding. Future increases to pensions (to reflect inflation) are awarded only if there are sufficient funds to do so, as determined by the PEPF's Actuary in regular valuations. In short, if there is insufficient funding then members' benefits may not be increased in future fully in line with inflation, or may not be increased at all. This key rule is of particular significance where a member seeks to transfer her or his benefits out of the PEPF. While transferring out is an option for most members, doing so naturally extinguishes any entitlement to future benefit from the PEPF.

- For transfers to a private pension scheme the transfer value (that is, the lump sum value placed on the member's benefit entitlement at the given date) is set by the Actuary, and must be cost-neutral to the PEPF in order to ensure that the funding of members' benefits which remain in the PEPF is not prejudiced.

- Accordingly, the calculation of transfer values is subject to regular change in order to reflect the Actuary's professional judgement of the current value in money terms of the future value of the benefits being transferred out. Warranted adjustments to the factors affecting transfer values, if any, are normally made quarterly, on the Actuary's advice. This procedure of adjusting transfer value factors on a regular basis is commonly used in defined benefit pension schemes regardless of their risk-sharing arrangements.

- The instant case was described by the Complaints Panel, and, seemingly as a result, by the press, as one concerning "*revaluation of pension*". That is incorrect. The member concerned wanted to leave the PECRS and was seeking a transfer value quotation. The complaint was about the basis on which the transfer value quotation was calculated.

- It must, however, be borne in mind that the member was not obliged to accept the transfer value he was quoted, although he did. If he had elected to leave his benefits in the PECRS, his pension and related benefits earned to that date would have been unaffected. Hence references in the Complaints Panel's findings, subsequently reproduced in the press, that the member's pension has been "*reduced by 20%*" are simply untrue.

- In early 2018, the update to the transfer value calculations that was required in order to ensure that transfer values remained on a cost-neutral basis was confirmed to the Committee by the Actuary. The Actuary confirmed that the impact on members who opted for a transfer value would vary between individuals and in particular there would be a reduction in transfer values for most members but there would be increases for other members. The Committee agreed that the new transfer value calculations should be implemented with effect from 1 May 2018. This was entirely normal procedure.

- However, given the delay some members experienced in obtaining transfer values at the time until after 1 May 2018, the Committee permitted certain members who had asked for a transfer value quotation prior to 1 May 2018 (even if they had done so by telephone only) to have their transfer value requoted on the pre-1 May 2018 basis, in cases where this would have led to a greater transfer value That was judged by the Committee to be fair.

- In the case of the complainant, it was asserted that a call had been made, though not by the member himself, who was abroad, but by his manager at his request. Had such a call been made then he would (as other members did) have received a revised transfer value quotation based on the pre-1 May 2018 basis. But there was no record of such a call's having been made by the manager. The first record of a call was made after 1 May 2018.

- The Committee, in investigating the complaint, reviewed telephone records of all incoming telephone calls to the PEPF administrator between the relevant dates when the call was alleged to have been made. There was no record of the call. The complainant provided call logs too in support of his claim but those records equally demonstrated that no call was made. Nor was there any record by the Administrator of a relevant call's having been logged.

- Although the complainant asserted that a call had indeed been made, the Committee's considered view, after the most careful and thorough consideration, was that it could not accept that assertion in view of the complete lack of evidence. To have done so would have been unfair to the membership of PECRS as a whole.

- When the case reached the Complaints Panel, it took the view, summarily, that the call had been made. But no evidence beyond the complainant's assertion was presented, and no credence was seemingly given to the technical evidence indicating no record of a call. This opinion by the Panel has been further considered by the Committee but it, the latter has concluded, with unanimity, that the opinion of the Panel offers no justification whatsoever for it to change its position. Without evidence of a call beyond mere hearsay, and when the means existed for a call to be evidenced by the 'system' had it been made, the Committee continued, after careful consideration of the Panel's opinion, to hold to its view that it would be in breach of its primary fiduciary duty to its whole membership were it to pay a further transfer value to the complainant's nominated pension scheme.

- This considered view was duly conveyed to the Panel, at a hearing, by the independent Chairman of the Committee but the Panel continued to hold to its position.

- As far as the Committee is concerned, the matter is now closed. The complainant is no longer a member of the PEPF, having accepted the transfer value he was quoted after 1 May 2018.

- The Panel has, claimed that the Committee's decision in this regard is unlawful and irrational and has suggested that the PEPF is not being managed or administered properly. That is unfounded and unreasonable. The Committee seeks to discharge a fiduciary responsibility for the collective benefit of all members. The Committee seeks to be impartial. It disregards the Panel's opinion with confidence that in this case a wholly proper and correct decision was taken in accordance with its duty.

- The Complaints Panel also suggested in its report that the Committee should have informed members that transfer value quotations were likely to decrease from the normal date of adjustment. This is very misguided. We are not aware of any large occupational defined benefit scheme which informs members about possible changes to their transfer values. It is not possible to make a general statement about the complex impact of underlying factors and assumption on individual transfer value quotations. In this case, for some members their transfer value quotation was expected to go up and in other cases it was expected to go down. The impact was expected to vary significantly between individuals, making a general communication quite impracticable. The point is, that underlying factors and assumptions change regularly, with differing impacts on different classes or cohorts of members. But change they must, as external circumstances such as inflation or investment expectations also change, in order to ensure continued fairness across the whole membership, which is the Committee's prime duty.

- The Committee hopes that this statement provides information and reassurance about how it dealt with the case in question, and the subsequent complaint. Further, the Committee hopes that this helps members to understand why it disagrees with the conclusions reached by the Complaints Panel, and serves to correct some of the incorrect commentary in the media that has followed.