

## Ombudsman's Determination

Applicant	Mr E
Scheme	Barnardo Staff Pension Scheme ( <b>the Scheme</b> )
Respondents	The Trustees of the Barnardo Staff Pension Scheme ( <b>the Trustees</b> )  Barnardo's

## Outcome

1. I do not uphold Mr E's complaint and no further action is required by the Trustees and Barnardo's.

## Complaint summary

2. Mr E has complained that:-
  - Barnardo's in-house pensions administration team (**the Scheme Administrators**) improperly dissuaded his wife, Mrs E, from transferring her pension rights in the Scheme to her self-invested pension plan (**the SIPP**) at the time of her original request to transfer in 2017.
  - The Scheme Administrators subsequently failed to carry out the transfer after receiving Mrs E's request for an updated statement of entitlement and cash equivalent transfer value (**CETV**) on 29 April 2018.
  - If a transfer was no longer possible, it follows that the Scheme Administrators and the Trustees failed to award him a lump sum death benefit from the Scheme after Mrs E subsequently died in May 2018.

## Background information, including submissions from the parties

3. On 1 May 2013, Mrs E became a deferred member of the Scheme, a final salary scheme, when it closed to future accrual.

4. On 1 May 2013, Mrs E was enrolled into the Barnardo's Retirement Savings Plan (**BRSP**), a money purchase scheme, administered by Aviva. The BRSP is a separate arrangement to the Scheme with separate trustees.
5. Rule 16 of the Scheme Trust Deed and Rules (**the Scheme Rules**) specified the death in service benefits payable from the Scheme.
6. Following the closure of the Scheme to future accrual, rule 16 was amended by clause 4.19 of a Deed of Amendment dated 30 April 2013 to stipulate that it no longer applied on or after 1 May 2013.
7. The benefits available from the Scheme on the death of a deferred member are covered in rule 17 of the Scheme Rules.
8. In January 2017, following her enquiry, Mrs E received details of the benefits available to her from the Scheme and also from the BRSP.
9. In a letter dated 12 January 2017, the Scheme Administrators provided Mrs E with details of the estimated pension and tax free cash available to her from the Scheme assuming she decided to retire on 1 May 2017. The letter showed that she was entitled to apply for a CETV of £377,917.58, in respect of her benefits in the Scheme, which was valid for three months from 12 January 2017.
10. Mr E says that having received advice from her independent financial adviser (**IFA**), Mrs E transferred her benefits in the BRSP to her SIPP. Mrs E authorised the IFA to contact the Scheme Administrators for further information about the transfer option available to her from the Scheme.
11. On 1 March 2017, the Scheme Administrators sent the IFA a "Transfer Out Statement" (**the Statement**) showing that the current CETV available to Mrs E had decreased to £368,957.17. The covering letter said that:-
  - The CETV available to Mrs E had been reduced to the minimum permitted by the Occupational Pension Schemes (Transfer Values) Regulations 1996 because the Scheme did not have sufficient assets to pay her the unreduced CETV of £424,088.70.
  - The position would be reviewed regularly to establish whether CETVs could be restored to their unreduced values in the future. However, the Trustees could not say when or if this might happen.
  - The reduced CETV quoted on the Statement was guaranteed for three months from 1 March 2017, provided there were no significant changes to the UK financial markets during that time.
  - If Mrs E would still like to proceed with a transfer on this reduced basis, she should complete the discharge forms and return them with copies of the requested documentation.

12. In an email dated 14 March 2017 (**the Email**) the Scheme Administrators informed Mrs E that:-

- The Scheme is a defined benefit (**DB**) arrangement. Benefits are linked to a member's earnings and length of pensionable service using a formula.
- The pension and tax free cash available to her from the Scheme would continue to increase if she deferred her retirement. However, this did not mean that the CETV available to her would also increase.
- If financial markets performed well in the future, it did not follow that the new CETV available to her would be higher than the current figure of £377,917.58.
- "The CETV is in large part calculated on gilt rates, with the lower the gilt the higher the CETV. Gilts are hovering around all time lows at present hence our CETVs are currently higher than normal. There are lots of articles online about this being a "golden period" of high CETVs for DB schemes (due to low gilts) that are unlikely to be repeated in the future.

Of course, if you are not happy with the CETV we quote in say a few years' time you are not compelled to transfer the monies you can accept your standard pension and lump sum from the Scheme."

- She had a statutory right to transfer her benefits in the Scheme to an approved pension arrangement up to age 64. The Trustees were currently allowing transfers for members aged 64 and above at their discretion. There was no guarantee that this would be the case in the future.
  - The onus was on Mrs E to contact the Trustees if she wished to take or transfer the benefits available to her from the Scheme.
13. Mrs E left Barnardo's in May 2017, after 28 years of service to look after her mother who was terminally ill. She resumed working for Barnardo's, on a casual basis, shortly after leaving and was re-enrolled as an active member of the BRSP.
14. In her letter dated 29 April 2018 to the Scheme Administrators, Mrs E sought clarification on how the benefit figures shown on the "Transfer Out Statement" sent to her IFA in 2017 were calculated. She also said:
- "Please can you provide an updated pension statement for myself showing benefits calculated as a pension annual salary and also as a transfer figure amount as I am still considering transferring my pension to my existing SIPP...and need an up to date valuation".
15. Mrs E died in May 2018 before the Scheme Administrators could comply with her request.

16. The Scheme Administrators informed Mr E, in their letter dated 13 July 2018, that a transfer of Mrs E's pension rights in the Scheme to her SIPP was no longer possible. In accordance with the Scheme Rules, his spouse's pension of £13,947.01 per annum could not be deferred or transferred to another pension scheme.

17. In his letter dated 18 July 2018 to the Scheme Administrators, Mr E said:

"I was particularly concerned by your statement about the lump sum payment. You refer to this as a death in service lump sum but looking at the closing statement of Mrs E's preserved scheme dated 30 April 2013, it states that if Mrs E died within five years of retirement, "A lump sum equal to the balance of five years' pension will be paid. A pension will be paid to any dependent of 2/3<sup>rd</sup> of your pension." I took this to mean that both the lump sum and 2/3<sup>rd</sup> pension would be paid.

This statement that a lump sum balance of 5 years' payment is also confirmed in your letter of 1<sup>st</sup> March 2017 under the title "Death Benefits After Retirement". I definitely considered Mrs E to have retired and only completed an exceedingly small amount of work since her retirement... Your letter suggests that by Mrs E agreeing to help out, I am to be penalised, if the lump sum is to be calculated by reference to the pay she received as a casual worker [sic]..."

18. The Scheme Administrators said in a letter dated 10 August 2018, that Mrs E's benefits in the Scheme could not be transferred. They explained that they did not have signed discharge forms, proof that she had obtained financial advice, and details of the receiving scheme. There was also no evidence to show that Mrs E had decided to take early retirement from the Scheme. Consequently, they could only pay the benefits available to him arising from the sad death of his wife as a deferred member.

19. On 30 August 2018, Mr E received a further letter from the Scheme Administrators. The letter said that Mr E and his son had been awarded a lump sum of £21,013.36 from the BRSP, based on the "as and when" hours that Mrs E worked after July 2017.

20. On 18 September 2018, the Scheme Administrators confirmed that no lump sum benefits would be payable to Mr E from the Scheme following Mrs E's death.

### **Mr E's position**

21. The Scheme Administrators improperly persuaded Mrs E in the Email to defer taking or transferring her benefits from the Scheme.

22. Although Mrs E accepted this advice, she had intended to transfer her benefits in the Scheme once she had sought further information and clarification of the figures shown on the Statement.

23. Mrs E had clearly demonstrated her intention to transfer from the Scheme. She enquired about a possible transfer of her pension rights in the Scheme and provided

details of her IFA and the SIPP. She also requested the current CETV available to her on three separate occasions and had transferred her benefits in the BRSP to her SIPP.

24. The only reason why the transfer of her pension rights in the Scheme had not also taken place by the time she died was because the Scheme Administrators had advised her “to wait”.
25. Shortly before her death, Mrs E told him that she wished to give half of her benefits in the Scheme to their son. The only way she could have done this was by transferring these benefits to the SIPP. She confirmed her wishes in a letter that she signed two days before her operation from which she did not recover.
26. The Scheme Rules stipulate, at rule 27(3), that Mrs E could have taken a CETV if she had made an “application in writing” to the Trustees. There is evidence to support that she made a valid application to transfer before she died. The absence of formal transfer documentation should not prevent the Trustees from respecting her wishes.
27. Rule 16 of the Scheme Rules state that if a member dies in service before Normal Retirement Age, a lump sum equal to four times the member’s earnings would be paid. “Service” is defined as “any regular and continuous period of employment as an employee.”
28. Mr E says that:

“...the circumstances of Mrs E resigning from her manager role in 2017 were due to personal circumstances, but her commitment to Barnardo’s continued despite this, and she remained in regular continuous employment. While she...only received nominal payment for some of it, [he] would ask the Trustees to look at her massive contribution and commitment [to Barnardo’s] and reflect this in awarding a lump sum based on her manager earnings.”
29. The IFA has written to the Trustees to support Mrs E’s case. The IFA said that due to “pressure from the Trustees”, Mrs E decided to defer transferring her benefits in the Scheme to the SIPP.

### **The Trustees’ position**

30. The Scheme Administrators were not authorised to provide Mrs E with financial advice concerning the options available to her from the Scheme. They only provided her with details of the various options in general terms and did not give her any specific advice.
31. They have seen no evidence to support the assertion that the Scheme Administrators dissuaded Mrs E from transferring out her pension rights in the Scheme. The Scheme Administrators sent the E-mail to help her make an informed decision after seeking independent financial advice.

32. They cannot ignore the fact that Mrs E had not completed the relevant discharge forms and provided the necessary documents so that the transfer could take place.
33. Mrs E's letter dated 29 April 2018 was not a transfer request. She only asked for a new statement of entitlement. This would suggest that Mrs E was still considering her options. Consequently, the letter fell short of being a "positive declaration" that she wished to transfer.
34. It was a legal requirement for Mrs E to have taken specific independent financial advice, on the transfer of her benefits from the Scheme to the SIPP, because her CETV was in excess of £30,000. After receiving appropriate advice, Mrs E could then have transferred at any time. However, she did not take any action to do so for over a year. There was no delay on the part of the Scheme Administrators in processing her transfer request because Mrs E did not formally make one.
35. They must administer the Scheme in accordance with the Scheme Rules. Mrs E was a deferred member of the Scheme who had not yet taken her retirement benefits. So the death benefits available to Mr E are payable in accordance with rule 17 of the Scheme Rules and he is only entitled to a spouse's pension.

### **Adjudicator's Opinion**

36. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees and Barnardo's. The Adjudicator's findings are summarised in paragraphs 37 to 52 below.
37. The fundamental duty of the Trustees was to give effect to the provisions of the Scheme Rules. Failure to do so would amount to a breach of trust. The Trustees' legal duties included paying out the right benefits at the right time.
38. In practice, the Trustees could delegate many of these duties, for example the day-to-day responsibility for administering the Scheme, to third parties. The ultimate responsibility for ensuring that the duties were carried out, nevertheless, remained with the Trustees.
39. Mr E had complained that the Scheme Administrators had improperly discouraged Mrs E from transferring her benefits in the Scheme to the SIPP in 2017. He had also complained that they subsequently failed to carry out her transfer request in 2018 after she asked for a revised CETV.
40. The Scheme Administrators were not authorised or qualified to recommend which course of action was right for Mrs E. However, the Adjudicator appreciated that there was a fine line between explaining the options available from a pension scheme and actively making a recommendation whether explicitly or implicitly.
41. Having carefully studied the letters, and the Email, that the Scheme Administrators sent to Mrs E and the IFA in March 2017, it was the Adjudicator's view that the information provided did not constitute a recommendation for Mrs E to take a

particular course of action. It was provided to assist Mrs E to understand the options open to her, including the possibility of postponing the transfer of her pension benefits.

42. Consequently, the Adjudicator was satisfied that the Scheme Administrators did not provide Mrs E with specific advice, which she acted on by delaying the transfer.
43. It was clear to the Adjudicator from the available evidence that Mrs E had intended to transfer her pension rights in the Scheme to the SIPP.
44. Regrettably, Mrs E misconstrued the information she had received from the Scheme Administrators as advice to defer the transfer. As a result, she failed to take the necessary action to complete the transfer before her untimely death.
45. The Scheme Administrators were only required to allow a transfer of Mrs E's pension benefits in the Scheme after all the Trustees' requirements, including the completion and return of the signed discharge forms, had been met. While the Adjudicator empathised with Mr E's position, those requirements were not met. So, it was the Adjudicator's opinion that the first part of Mr E's complaint could not be upheld.
46. Mrs E was still a deferred member of the Scheme on the date of her death. This was because she had not taken her benefits or transferred them to an alternative pension arrangement.
47. The Trustees must act in accordance with the Scheme Rules. As Mrs E was a deferred member at the time of her death, the benefits available to Mr E from the Scheme were those specified in rule 17 of the Scheme Rules. This amounted to a spouse's pension in his case.
48. Mr E had contended that he should also have received a lump sum death benefit from the Scheme.
49. Following the closure of the Scheme to future accrual of benefits, there were no active members remaining in the Scheme. Rule 16 of the Scheme Rules, which contained provisions for death in service benefits, was no longer valid and was amended to show that it did not apply from 1 May 2013. Consequently, death in service lump sum benefits could no longer be awarded by the Trustees after this date, in accordance with this rule.
50. If Mrs E had been in receipt of her pension from the Scheme and had died within five years of her retirement, then a lump sum would have been available from the Scheme. This lump sum would have represented the balance of the pension payments which she would otherwise have received in the first five years of retirement. As Mrs E had not yet taken her retirement benefits from the Scheme, the lump sum was not payable on her death.
51. Mr E received a death in service lump sum from the BRSP because Mrs E was re-enrolled in it as an active member when she resumed working for Barnardo's on a

casual basis. This lump sum was payable in accordance with the trust deed and rules of the BRSP.

52. In the Adjudicator's view, the Trustees and the Scheme Administrators had paid Mr E the correct benefits available to him from the Scheme on the death of his wife so there had been no maladministration on their part.
53. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome.
54. Mr E said that:-
- There was no break in Mrs E's service with Barnardo's after she left in May 2017 and returned to work on a casual basis. The work which Mrs E undertook as a casual worker was "continuing work which only she could do".
  - He did not believe that Mrs E signed a new contract with Barnardo's.
  - "I still feel that everyone is finding lots of reasons to defend their positions and still feel Mrs E was badly treated and not given her due."
55. I note the additional points raised by Mr E but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

56. Having carefully examined all the available evidence, I consider that:
- (i) the Scheme Administrators did not improperly discourage Mrs E from transferring her benefits in the Scheme to the SIPP in 2017;
  - (ii) the Scheme Administrators did not subsequently fail to carry out her transfer request in 2018 after she asked for a revised CETV; and
  - (iii) the Trustees and the Scheme Administrators have paid Mr E the correct benefits available to him from the Scheme on the death of his wife, that is a spouse's pension only.
57. My reasons for saying this are essentially the same as those given by the Adjudicator in his Opinion.
58. It is clear from the evidence that Mrs E re-joined the BRSP as an active member when she resumed working for Barnardo's on a casual basis. As a consequence of this, Mr E was correctly entitled to a death in service lump sum of £21,013.36 payable in accordance with the trust deed and rules of the BRSP.
59. While I empathise with Mr E's circumstances, I do not find that there has been any maladministration on the part of the Trustees and Barnardo's.



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60. I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 November 2022