

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondent	Nottinghamshire County Council ( <b>The Council</b> )

## Outcome

1. I do not uphold Mrs N's complaint and no further action is required by the Council.

## Complaint summary

2. Mrs N's complaint concerns delays that she says took place when she requested a transfer of her benefits out of the Scheme. She maintains that, as a result of these delays, she was not able to complete the transfer as she was within a year of her normal retirement date (**NRD**).

## Background information, including submissions from the parties and timeline of events

3. I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mrs N is represented by her husband (**Mr N**).
5. On 10 October 1983, Mrs N began her employment with the Council, and she joined the Scheme.
6. On 25 November 1995, Mrs N's employment with the Council ended and she became entitled to deferred benefits from the Scheme.
7. Mrs N maintained that she contacted the Council to request a cash equivalent transfer value (**CETV**) illustration but never received a reply. The timing of this request is uncertain, but it is possible that it was in early 2017.
8. In August 2018, Mrs N said that she telephoned the Council to request a CETV illustration.

9. On 29 October 2018, the Budget issued by the Government resulted in the Ministry of Housing, Communities and Local Government announcing that new actuarial factors would be required for the Scheme.
10. On 19 November 2018, the new actuarial factors were made available by the Government Actuary's Department (**GAD**).
11. On 8 January 2019, the new factors were implemented in the Scheme's administration system.
12. On 11 January 2019, Mrs N telephoned the Council. She notified it of a change of address and also requested a CETV illustration.
13. On 16 January 2019, the Council sent Mrs N an estimate of the benefits payable to her should her deferred benefits be put into payment.
14. On 22 January 2019, Mrs N telephoned the Council to notify it that she required a CETV illustration.
15. On 8 February 2019, the Council wrote to Mrs N providing her with the CETV illustration she had requested.
16. On 17 April 2019, Mrs N's independent financial adviser (**the IFA**), sent the Council an email. It asked the Council to provide it with information to enable it to advise Mrs N on her Scheme benefits. Included in the items the IFA requested, were the forms that would need to be completed if she wished to transfer her benefits out of the Scheme.
17. Later in April 2019, Mrs N reached age 59.
18. On 1 and 7 May 2019, the IFA emailed the Council asking for a response to its email of 17 April 2019.
19. On 29 May 2019, the IFA telephoned the Council. The Council confirmed that an estimate of Mrs N's retirement benefits, together with a CETV illustration, had been provided to her in January and February 2019 respectively. The IFA said that Mrs N did not have these. The Council agreed to send the IFA copies of the quotations. However, it said that it would not send the transfer forms as Mrs N was now within a year of her NRD and a transfer was no longer possible.
20. On the same day, the Council wrote to the IFA. It provided a deferred retirement statement, a form and guide for claiming deferred benefits, a brief guide to the Scheme and a CETV illustration. It confirmed that these were the same documents that had previously been sent to Mrs N. It also explained that a transfer would not be allowed because Mrs N was within a year of her being able to claim her deferred benefits without actuarial reduction.
21. On 30 May 2019, Mrs N sent an email to the Council. In summary, she said:-

- She had emailed the Council requesting a CETV illustration. She was told there was a hold on CETV calculations as GAD were changing the factors.
- She had received the CETV illustration on 11 February 2019. This was six months after her initial request. At the time she received the illustration, she was in hospital.
- She left hospital on 25 March 2019 and had arranged a meeting with her IFA.

22. On 17 June 2019, Mrs N wrote to the Council to raise a complaint for consideration under stage one of the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). She said:-

- She had wished to transfer her benefits out of the Scheme to enable her to draw down monies for a deposit to purchase a house.
- She had initially telephoned the Council in August 2018 to request a CETV illustration. She was told, at that time, it could not provide CETV illustrations as its system was not yet set up to do this. She was asked to contact it again a few weeks later.
- When she telephoned the Council back, she was informed that it was not possible for her to be sent a CETV illustration. She was told that this was because it did not hold up-to-date details of her National Insurance (NI) contributions.
- On 11 January 2019, she telephoned the Council again requesting a CETV illustration. Instead, she received an estimate based on her deferred pension being put into payment.
- She met with her IFA, and it sent an email to the Council on 17 April 2019, requesting further information so that it could advise her on her options. It took several weeks for a response to be provided.
- Most other final salary pension schemes offered transfers up to and beyond pension age. She was now being prevented from transferring her benefits out of the Scheme because it was less than a year to her 60<sup>th</sup> birthday.

23. On 15 July 2019, an independent Adjudicator acting on behalf of the Council provided its stage one IDRPs response. The independent Adjudicator partially upheld Mrs N's complaint. In summary, she said:-

- It had no record that Mrs N had telephoned the Council to request a CETV illustration in August 2018. At that point its administration system was able to provide CETV figures.
- It held no record of the telephone call in which Mrs N said that she was told it did not hold up-to-date NI contribution details. If the NI contribution figures had been needed, it would have contacted HM Revenue & Customs. However, it already

held a guaranteed minimum pension figure for Mrs N, and this had been used in a CETV illustration provided to her in 2005.

- On 29 October 2018, the Budget had resulted in the Ministry of Housing, Communities and Local Government informing Local Government Pension Funds that new factors would be required. Once published, these new factors were to be used in the calculation of CETVs.
  - Until the new factors were published, GAD instructed that the issuing of CETV illustrations was to be put on hold. On 19 November 2018, the new factors were published. However, due to delays with the pension administration system provider, the new factors were not implemented until 8 January 2019. After this date, work started on processing the backlog of CETV illustration requests.
  - Its records indicated that Mrs N telephoned the Council on 11 January 2019. During the call, her home address was updated, and her deferred benefits were discussed. A letter was subsequently sent to her on 16 January 2019 quoting her entitlement should her deferred benefits be put into payment.
  - It held a record of Mrs N's telephone call of 22 January 2019. This was the first reference that it had of her requesting a CETV illustration.
  - A CETV illustration was sent to Mrs N on 8 February 2019. It should have been made clearer that a restriction applied and an application to transfer would need to have been received prior to her reaching her 59<sup>th</sup> birthday. All the necessary parts of the transfer process, as listed in Appendix 1, would have had to have been completed by then.
  - It was reasonable to expect the IFA to have been aware of the Regulations that governed the Scheme (**the Regulations**) and to have known about the 12-month restriction. It could not comment on other pension schemes. However, it needed to act within the Regulations.
  - The partial uphold was in respect of the fact that the Council should have notified Mrs N earlier that a transfer could not take place once she was within a year of her NRD.
24. On 7 February 2020, the Council provided its stage two IDRPs response after Mrs N had asked for her complaint to be reconsidered. It partially upheld the complaint and, in summary, it said:-
- On the balance of probabilities, the telephone call that Mrs N had said took place in August 2018 had taken place in November or December 2018. This was because it was able to issue CETV illustrations in August 2018. However, it acknowledged that she had been told to contact it again a few weeks later. It upheld that it should have taken Mrs N's details and issued a CETV illustration when it was in a position to do so, rather than ask her to contact it again.

- When Mrs N telephoned the Council back, she was told that it did not hold up-to-date details of her NI contributions. It upheld that she had either been given incorrect information or a misunderstanding had taken place. It considered that the second explanation was more likely.
- When Mrs N telephoned the Council on 11 January 2019, the initial call handler had passed her on to someone dealing with deferred benefits rather than CETV illustrations. It upheld that there had been a misunderstanding between the initial call handler and Mrs N.
- The IFA requested a CETV illustration on 17 April 2019 and a response was not provided until 29 May 2019. It upheld that it had taken several weeks to respond due to annual leave and workloads. Also, that it would have been better service to have provided an estimate of when the IFA could have expected a response.
- It upheld that it had failed to draw Mrs N's attention to the fact that she only had until her 59<sup>th</sup> birthday to exercise her right to transfer. This should have been made clear to her in February 2019.
- It did not uphold the part of Mrs N's complaint concerning her not being permitted to transfer her benefits out of the Scheme. The Council was required to administer the Scheme in accordance with the Regulations and the law. There was no discretion in this respect.
- The Scheme only allowed for a transfer to take place where permitted by the Pension Schemes Act 1993 (**the Act**). Extracts from the Regulations and the Act can be found in Appendix 2.

25. The Council made the following additional submissions:-

- Mrs N had, for at least part of the period that she was investigating a transfer, access to the IFA. The restriction on transfers in the year before NRD was a standard position in pensions law. It was not unreasonable for her to have expected the IFA to have advised her on this.
- The Scheme asked for NI numbers as part of its process of ensuring that its call handlers were speaking to the correct person. It was likely that there was a misunderstanding between Mrs N and the call handler at the Council in relation to her NI number and contributions.
- Mrs N suggested that she was only told that she was too late to apply to receive a CETV two years after she had originally telephoned and requested one. The Council was not aware that there had previously been any suggestion that Mrs N had telephoned it to request a CETV two years earlier.
- In relation to any delays in providing information to Mrs N and the IFA:-
  - It was not responsible for the period from 29 October to 19 November 2018 as it could not produce CETVs without the new factors. Furthermore, the new

factors needed to be implemented on its system, so it was not responsible for the period from 19 November 2018 to 8 January 2019.

- It was responsible for the period from 11 to 22 January 2019.
- It was not responsible for any delays as a result of Mrs N's hospitalisation.
- By the time the IFA contacted it on 17 April 2019, there was approximately a week left in which the transfer would have needed to have been completed. This was insufficient time.
- It accepted that some distress and inconvenience had been caused to Mrs N due to the items that were upheld in its stage two IDRPs response. It offered her a £500 payment in this respect.
- It should not be held responsible for Mr N's tax bills or any money he could have added to his pension fund. These losses did not flow from a failing by the Council. They were due to Mr and Mrs N's decision to proceed with their house purchase after they were aware that Mrs N could not take a CETV.

26. Mr N on behalf of Mrs N made the following additional submissions:-

- Both she and the IFA were surprised by the fact that transfers were not possible in the year before her reaching her NRD. The IFA said it believed it had dealt with other local authorities where this restriction did not apply.
- Annual leave and work volumes were not a valid reason for the delays she had encountered.
- She should have not been put in a disadvantageous position because the new factors were not available. Furthermore, there had been a lengthy delay in the Council implementing the new factors.
- There had been no misunderstanding in relation to NI numbers and contributions.
- In relation to the telephone call she made two years earlier, the Council's auto-response said that calls were recorded. So, it should have a record of this call.
- The Council's offer of £500 was inadequate compensation for the huge upset and stress it had caused her, particularly during a period of illness.
- Due to her illness, she wanted to move back to Nottingham to be closer to the hospital and her family and friends. The transfer was to go towards a deposit to buy a house in Nottingham.
- Mr N had to transfer one of his pensions into drawdown which led to an extra tax bill and resulted in him only being able to contribute a limited amount to his ongoing pension fund. Mr N's losses were due to the Council's failings as they would not have been able to complete their move without taking the actions that they did.

- She considered that compensation should be paid consisting of; £49,941 for the extra tax bill Mr N incurred, £20,000 that Mr N could have added to his pension before retirement, £28,634 for the reduction in her pension due to her not taking the CETV and £10,000 for the distress and inconvenience she had suffered.

## **Adjudicator's Opinion**

27. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised below:-

- The Adjudicator noted that there was some uncertainty over when Mrs N first asked the Council for a CETV illustration. Mrs N maintained that there was a two-year delay before she received a CETV illustration which would suggest that the first request was made in early 2017. She also maintained that she made a second request in August 2018.
- The Council said that it was likely that Mrs N first made a request in November or December 2018. Its reason for suggesting this was that Mrs N said that she was told that, when making the second request, the Council was unable to issue CETV illustrations at that time. The Council had confirmed that it was able to issue CETV illustrations in August 2018. It was not until after the Budget on 29 October 2019 that it was required to put a hold on issuing CETV illustrations.
- Unfortunately, no evidence was available to confirm the timing of the initial request made by Mrs N. So, the Adjudicator based the rest of his findings on the first request having been made in November or December 2018. On the balance of probabilities, he took the view that this was the most likely timing. He said this as Mrs N was told, when making her initial request, that the Council was unable to provide CETV illustrations at that time. The period when its administration system was unavailable for such requests fell mainly from November to December 2018.
- The Adjudicator acknowledged that it would have been a cause of frustration for Mrs N that her request for a CETV illustration coincided with a period when new factors were being introduced. However, taking November/December 2018 as a starting point, in the Adjudicator's opinion, the Council could not be considered responsible for any delay prior to 8 January 2019. In that period, it was waiting on GAD to provide the new factors and for those factors to be implemented in the Scheme's administration system.
- The Adjudicator took the view that the period that the Council could be considered responsible for was from when the new factors were implemented on 8 January 2019 to when Mrs N was sent a CETV illustration on 8 February 2019. In the Adjudicator's opinion, this one-month period was not excessive, particularly given that it was likely that the Council had a backlog of cases to process. This was as a result of the provision of CETV illustrations having been put on hold for over two months.

- Having been provided with the CETV illustration on 8 February 2019, in the Adjudicator's view, there was still time for Mrs N to complete the transfer. However, he noted that she had a period in hospital and was not able to pick up the progression of the transfer again until April 2019.
- In the Adjudicator's opinion, some time could have been saved in April 2019 if Mrs N had been able to provide her IFA with the CETV illustration she had been sent on 8 February 2019. However, the IFA made a further request to the Council for it to provide another CETV illustration on 17 April 2019. Even if the Council had responded within a week, it would have been too late for the transfer to have been completed before Mrs N reached age 59.
- In conclusion, it was the Adjudicator's opinion that any delays in the provision of the CETV illustration prior to 8 January 2019 were out of the Council's control. Once the new factors had been implemented, the Council provided the CETV illustration in a timely manner.

28. Having considered the timing of the events and any delays that had occurred, the Adjudicator went on to consider the other aspects of Mrs N's complaint:-

- The Adjudicator noted that there were opportunities in both telephone calls and written communications for the Council to notify Mrs N that her transfer request would have to be received before her 59<sup>th</sup> birthday. However, this information was readily available to members, including on the Local Government Pension Scheme website. As it was written into the Act, and it was also a common feature within the pensions industry, in the Adjudicator's view, the IFA should have been aware of this.
- While, it would have been helpful if the Council had notified Mrs N of the restriction earlier, the Adjudicator did not take the view that this amounted to maladministration.
- During the course of Mrs N's interactions with the Council there were a number of misunderstandings that took place. These were:-
  - A conversation where Mrs N got the impression that some missing NI contributions on her record were holding up the provision of the CETV illustration.
  - During the telephone call on 11 January 2019, when Mrs N was attempting to request a CETV illustration. The Council's file note of this conversation refers to Mrs N wanting to claim her deferred pension. She was subsequently sent an estimate of the benefits she would receive if her deferred pension was put into payment.
- The Adjudicator noted that the Council acknowledged these misunderstandings. It also accepted that, when Mrs N made her initial request, it would have been better practice for it to have taken her details and issued a CETV illustration when it was



able to provide illustrations again, rather than asking her to telephone it again at a later date.

- As no recording or transcript of these conversations was available, it was not possible for the Adjudicator to comment with any certainty on the reasons why there was confusion in each instance. The Adjudicator appreciated that these misunderstandings would have been a cause of frustration for Mrs N.
- The Adjudicator noted that the Council had offered Mrs N £500 for non-financial injustice. The Adjudicator did not take the view that the payment of a higher sum was appropriate given the circumstances of the case.

29. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

30. Mr N provided his further comments which do not change the outcome. In summary he said:-

- The facts of the case had not been adequately considered.
- The Council, in its stage two IDRPs response, had said that it upheld all items of Mrs N's complaint other than it not having allowed her to transfer her benefits once she was within a year of her NRD. The items it upheld included:-
  - It could have put Mrs N on a waiting list for the provision of a CETV illustration rather than asking her to contact it again at a later date.
  - The conversation in which Mrs N had understood that it needed to obtain her NI records, for which it agreed it must take at least some responsibility.
  - The confusion during the telephone call on 11 January 2019, for which the Council agreed that it should take some responsibility.
  - The failure to draw Mrs N's attention earlier to the fact that she had to exercise her right to transfer before she was within a year of her NRD.
- These shortcomings, which had been admitted by the Council, had prevented Mrs N from transferring her benefits out of the Scheme. This had cost them tens of thousands of pounds and had left them with no pension, other than that from the State.

31. I note the additional points raised by Mr N, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

32. Mrs N's complaint concerns the fact that she was unable to transfer her benefits out of the Scheme. She says that this was due to delays caused by the Council which resulted in her no longer being eligible for a transfer due to her being within a year of her NRD.

33. Mr N maintained that the facts of the case had not been adequately considered by my Adjudicator. I do not agree that this is the case, and I am satisfied that adequate consideration has been given to the evidence that is available. I do recognise that there is some uncertainty over the timing of some of the events and there is also a lack of evidence in relation to what was said during some telephone conversations.
34. In particular, the timing of Mrs N's original request for a CETV illustration is unclear. Mrs N maintained that she made requests in early 2017 and then again in August 2018. The Council said that it was more likely that the original request was made in November or December 2018. Mrs N asserted that she was told by the Council that there was a hold on providing CETV illustrations. Considering this and the timing of the Budget that resulted in a change of factors being required, I consider that, on the balance of probabilities, the Council's understanding of when the request was made was correct.
35. I have considered the delays in providing the CETV illustration while the Council was waiting for the GAD to provide the new factors and for these factors to be implemented in the administration system that the Council used. I do not agree that the Council can be held responsible for these delays. I find that the Council can only be held responsible for the period from 8 January to 8 February 2019. I do not consider this to be an excessive period for it to have taken to prepare the CETV illustration in the circumstances.
36. Mr N has drawn my attention to a number of items that were upheld in the Council's stage two IDRP response. Two of these relate to telephone conversations that took place between Mrs N and the Council. The first of these being when she telephoned it back after making her request for a CETV illustration and the second being on 11 January 2019. In the first of these conversations, Mrs N was left with the impression that the Council needed to obtain a history of her NI contributions. In the second, the Council believed that Mrs N was seeking a quotation for putting her deferred benefits into payment rather than a CETV illustration.
37. While the Council has accepted some responsibility for the confusion that took place during both telephone calls, it has confirmed that no transcript or recording of these calls is available. For that reason, I am unable to come to any definitive conclusions on the cause of the confusion in each case. However, it seems likely that both were genuine misunderstandings for which no party can be considered to have been at greater fault than the other.
38. In its stage two IDRP response, the Council also acknowledged some failings in its administration procedures. Firstly, it had asked Mrs N to contact it again when it was unable to provide a CETV illustration rather than putting her on a waiting list. I agree that the Council taking her details and processing her request when its system was available again to undertake CETV calculations would have been a more helpful approach. However, I do not consider the fact that it asked her to contact it again later to have been maladministration on its part.

39. Secondly, that it had failed to draw Mrs N's attention earlier to the fact that she had to exercise her right to transfer before she was within a year of her NRD. Again, I would agree that this aspect of the Council's communications to Mrs N could have been dealt with differently. However, I do not consider that there was a legal requirement for the Council to share this information with her earlier. Furthermore, this information was readily available elsewhere. Mrs N was being advised by the IFA who I would have expected to have had some awareness of this restriction as it is a common feature within the pensions industry. For these reasons, I do not agree that this can be considered to be maladministration on the Council's part.
40. Mr N said that, as a result of Mrs N being unable to transfer her benefits out of the Scheme, they were left with no pension apart from that from the State. I do not agree that this is the case, as Mrs N still has an entitlement to benefits from the Scheme.
41. In conclusion, I find that the Council cannot be held responsible for the fact that Mrs N did not complete the transfer of her benefits out of the Scheme before she was within a year of her NRD. Furthermore, while some improvements to the Council's administration procedures have been identified and some confusion took place during telephone conversations, I do not agree that the Council was responsible for any maladministration.
42. I do not uphold Mrs N's complaint.
43. Mrs N is free to approach the Council in relation to the £500 offer that it had made should she wish to take up its offer.

**Anthony Arter**

Pensions Ombudsman  
28 July 2022

## **Appendix 1**

### **Parts of the transfer process that would have had to have been completed before Mrs N was within a year of her NRD**

The Council said:

- “1. A transfer payment quotation had been provided to the new scheme.
2. The new scheme providers had conveyed to the individual what the transfer would purchase in the new scheme.
3. The individual had sought independent financial advice (where the transfer payment would be in excess of £30,000).
4. The individual, the new scheme providers and the IFA had signed and returned the various transfer application forms and declarations.”

## **Appendix 2**

### **Extracts from the Local Government Pension Scheme Regulations 2013 and the Pension Schemes Act 1993**

Local Government Pension Scheme Regulations 2013:

“96 - (1) A member may apply for a transfer under Chapters 1 or 2 of Part 4ZA of the Pension Schemes Act 1993 and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004).”

The Pension Schemes Act 1993:

“95 - Ways of taking right to cash equivalent.

- (1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below.
- (1A) In the case of a right acquired under section 94(1), the application must be made -
  - (a) within the period of 3 months beginning with the guarantee date shown in the relevant statement of entitlement, and
  - (b) if the cash equivalent relates to benefits that are not flexible benefits, by no later than the date that falls one year before the member attains normal pension age.”