

Ombudsman's Determination

Applicant	Mr S
Scheme	Royal Mail Statutory Pension Scheme (the Scheme)
Respondent	Royal Mail Statutory Pension Scheme (Royal Mail)

Outcome

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

Complaint summary

3. Mr S has deferred benefits under the Scheme, which is an unfunded public sector scheme. In 2015, new legislation (Appendix 1) came into effect which meant benefits from unfunded public sector schemes could not be transferred to defined contribution schemes after 5 April 2015 (**the transfer cut-off date**).
4. Pension benefits from defined contribution schemes can now be accessed in full at age 55. Mr S wanted to transfer away from the Scheme and take advantage of this flexibility.
5. Mr S argues he requested to transfer his benefits from the Scheme to Standard Life (a defined contribution scheme), but that Royal Mail did not process his request before the transfer cut-off date. As a result, he can no longer transfer his benefits to a defined contribution scheme and he will have to wait additional years before he can access his benefits.

Background information, including submissions from the parties

6. On 14 October 2014, Mr S requested a Cash Equivalent Transfer Value (**CETV**) from Royal Mail, along with the necessary transfer request forms. On 20 October 2014, Royal Mail acknowledged his request and confirmed it had 13 weeks from the date of the request to produce a CETV. Royal Mail has subsequently highlighted the relevant legislation which confirms it is allowed 13 weeks to produce a CETV (Appendix 2).
7. On 8 December 2014, approximately seven weeks after Mr S' request, Royal Mail sent him a CETV and accompanying documents. These documents included a cover

letter which stated that, to proceed with the transfer, Mr S must ensure the enclosed Release Benefit Authority (**RBA**) forms were completed and sent to his new pension provider. The letter confirmed that the RBA forms would then need to be returned to Royal Mail before the CETV expiry date, in order for the transfer to go ahead. The CETV was guaranteed for three months, and so the guarantee date was 8 December 2014 and the expiry date was 8 March 2015.

8. On 5 February 2015, Mr S signed the RBA forms and a letter of authority form for his Independent Financial Advisor (**IFA**). The evidence indicates that the IFA sent the Letter of Authority and one of the RBA forms to Royal Mail on this date. The other forms were sent to Standard Life.
9. The Letter of Authority form used by the IFA included an automatic request for a CETV. Due to this, Royal Mail recorded that a second CETV request was received on 5 February 2015. However, Mr S has confirmed that he did not wish to request a second CETV and that he is not seeking to rely on this erroneous request. In any event, Royal Mail has provided evidence that it would not have been able to generate another CETV before 5 April 2015 at this point. In particular, it has forwarded a statement from the relevant department which confirms new CETV requests were taking almost the full 13 weeks to process by this time – which would mean a second CETV would not have been generated for Mr S before the transfer cut-off date at this time.
10. On 8 March 2015, the guarantee on the CETV issued 8 December 2014, expired. However, Mr S states that Royal Mail informed him this did not matter. In particular, Mr S says he was told by Royal Mail that he could send the RBA forms to them at any time and, if his CETV had expired, a new one would be generated at the point of transfer. However, neither Mr S nor Royal Mail have provided evidence to support this or show that an open-ended extension was agreed.
11. On 30 March 2015, Mr S signed the Standard Life Client's Transfer Declaration forms. Royal Mail has confirmed Mr S' forms were then received by email on 1 April 2015 and by post on 23 April 2015.
12. On 8 April 2015, Royal Mail acknowledged the forms received on 1 April 2015. However, the transfer cut-off date had passed by this time and Mr S was not able to transfer his benefits.
13. Mr S believes Royal Mail ought to have prioritised processing his documents when they received them by email, given the importance of the impending transfer cut-off date. Royal Mail has referred to legislation (Appendix 3) to argue that the forms had to be received in writing before they could be processed. Royal Mail has interpreted the legislation as meaning the documents needed to be received by post – and this did not happen until after the transfer cut-off date. In any event, Royal Mail states that the forms received were in relation to the first CETV, which had expired.

14. Mr S has also emphasised that Royal Mail ought to have been able to generate a CETV on the date of transfer itself. However, Royal Mail has confirmed that generating an accurate CETV is a timely process as a significant amount of information has to be gathered, processed and checked.
15. Mr S feels he has suffered as a result of a staff shortage at Royal Mail. However, Royal Mail has confirmed that it did not have a staff shortage. Instead, it has explained that this was a temporarily busy period, but its staff were still able to deal with CETV requests within the legal timeframes it had to comply with.

Adjudicator's Opinion

16. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Royal Mail. The Adjudicator's findings are summarised briefly below:-
 - The Adjudicator was not satisfied that Royal Mail would have needed to receive Mr S' RBA forms by post in order for them to have been received "in writing". The Adjudicator believed it is arguable that they can be considered as received in writing when they were emailed.
 - However, the Adjudicator noted that the forms Royal Mail received were in relation to an expired CETV, and there was no evidence to show Mr S had been told the expiry date did not matter.
 - The Adjudicator did not believe it was reasonable for Royal Mail to generate a new CETV by 5 April 2015 once it received the forms.
 - The Adjudicator felt it was reasonable for Royal Mail to say there was no internal resource or staff shortage problem.
17. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.
18. Mr S has now highlighted guidance issued by several other unfunded public sector schemes (notably, Teachers' Pension Scheme and Civil Service Pension Scheme - appendices 4 and 5) which told its members to send their transfer forms to it by 5 April 2015. He believes this is evidence that transfers from unfunded public sector schemes to defined contribution schemes could be processed after the 5 April 2015, provided the relevant forms had been received by the scheme before that date.
19. Mr S has acknowledged that these schemes stated there must be a CETV or equivalent granted before the transfer could be completed, but highlights that the guidance issued did not explicitly say the CETV had to be valid.

Ombudsman's decision

20. Between October 2014 and April 2015, Mr S only received one CETV from Royal Mail. The covering letter for the CETV made it clear that, in order for a transfer to go ahead, Royal Mail would have to receive a completed copy of all of the necessary forms before 8 March 2015. There is no evidence that Mr S was led to believe this expiry date did not apply in his case, and, as such, the CETV was not valid when he submitted the remainder of his transfer forms to Royal Mail.
21. Mr S has argued that he should not have needed a valid CETV in order for his transfer to be completed. He believes the important point is that his transfer forms were received by Royal Mail before the transfer cut-off date, and that should have been enough.
22. I do not agree with Mr S. I believe it is reasonable for Royal Mail to have required a valid CETV before the transfer cut-off date. Section 95 (1A) of Pensions Scheme Act 1993 (as amended by Pension Schemes Act 2015) states that the application for a transfer must be made by a member within the period of 3 months beginning with the guarantee date of a CETV or equivalent. The guarantee date on Mr S' CETV was 8 December 2014, and so the legislation states that he would have needed to apply for his transfer by 8 March 2015.
23. Mr S has highlighted that other schemes seemed more flexible, but I am not satisfied that this is the case. Mr S seeks to imply into the referenced guidance (ibid) that a CETV need only be issued, rather than valid, for a scheme to process a transfer before the transfer cut-off date. However, I do not find that this is a reasonable assumption or that it is in line with the legislation. I am persuaded that a valid CETV was required.
24. Lastly, I am satisfied that Royal Mail could not have reasonably generated a new CETV between receiving Mr S' transfer forms and the transfer cut-off date. Royal Mail has provided evidence to show that it needed a significant amount of time to generate a CETV during the period in question, and I find this to be reasonable.
25. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
20 March 2017

Appendix

Appendix 1

Extract from Pensions Scheme Act 1993 (as amended by Pension Schemes Act 2015):

“95 (2A) In the case of a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are-

(a) for acquiring transfer credits allowed under the rules of another occupational pension scheme if-

(i) the benefits that may be provided under the other scheme by virtue of the transfer credits are not flexible benefits [emphasis added]”.

This amendment took effect from 6 April 2015.

Appendix 2

Extract from Occupational Pension Schemes (Transfer Values) Regulations 1996:

“**Part III (6)** (1) The guarantee date in relation to a statement of entitlement such as is referred to in section 93A of the 1993 Act (salary related schemes: right to statement of entitlement) must be within a period of three months beginning with the date of the member’s application under that section for a statement of entitlement, or, where the trustees of the scheme are for reasons beyond their control unable within that period to obtain the information required to calculate the cash equivalent mentioned in section 93A(1) of the 1993 Act, within such longer period as they may reasonably require as a result of that inability, provided that such longer period does not exceed six months beginning with the date of the member’s application.”

Appendix 3

Extract from Pensions Scheme Act 1993:

“95 (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.”

Appendix 4

Guidance issued by Teachers' Pensions Scheme in relation to transferring out before 6 April 2015:

"Important information about transfers

Important update on transfers deadline - Latest update

Block on transfers from unfunded public sector pension schemes to flexible pension arrangements

From 6 April 2015, changes under the Pensions Schemes Act 2015 will stop transfers from unfunded public service pension schemes, such as the Teachers' Pension Scheme, to pension schemes, whether in the UK or abroad, based on defined contributions or flexible access arrangements.

If you do wish to seek a transfer to such a scheme before 6 April 2015 you need to have made a request for and received a Guaranteed Transfer Value (GTV) from the Teachers' Pension Scheme and submitted a properly completed Discharge Form 350 to Teachers' Pensions before 6 April 2015. An original signature is required and we do not accept email or fax copies. Please note that the Teachers' Pensions offices will be closed from 3 April to 6 April inclusive for Easter."

Appendix 5

Guidance issued by Civil Service Pension Scheme in relation to transferring out before 6 April 2015:

"9 February 2015

Transfers from unfunded public service pension schemes to defined contribution arrangements will no longer be allowed from 6 April 2015, following Government changes announced at Budget 2014.

The rule changes mean that members who have not completed and returned an instruction to transfer their Civil Service pension to a defined contribution pension scheme before 6 April 2015 will not be able to do so.

There are two stages to transferring benefits out of the Civil Service pension scheme:

1. A member must request a statement of entitlement of the amount of the cash equivalent of the member's benefits under the scheme (the amount of their transfer value).
2. After receiving the transfer value quote a member has to apply in writing for the transfer value to be used in one of the ways permitted by the legislation.

Requesting a statement of the amount of your transfer value (stage one) from the

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scheme before 6 April 2015 is not and cannot be treated as an application to make the transfer (stage two).

If you already have a statement of the amount of your transfer value from the scheme, any application to transfer a pension to a defined contribution scheme must be made before the end of 5 April 2015. Transfer instructions to transfer to a defined contribution scheme after this date cannot be accepted. An application to transfer pension is to be taken to have been made if it is actually delivered to the scheme at the address below by that date, or sent by post by that date in a registered letter or by the recorded delivery service.”