

Ombudsman's Determination

Applicant	Mr Y
Scheme	HSC Pension Scheme (the Scheme)
Respondents	HSC Pension Service (HSC)

Outcome

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

Complaint summary

3. Mr Y has complained that he was led to believe he could transfer the value of his deferred pension benefits in the Scheme, to a Self-Invested Personal Pension **(SIPP)** with AEGON after April 2015.
4. Mr Y says that HSC are at fault for failing to inform him that a change in legislation prevented transfers from unfunded Defined Benefit **(DB)** public sector schemes into Defined Contribution **(DC)** arrangements. Therefore it would not be possible for Mr Y to transfer his benefits in the Scheme to a SIPP.

Background information, including submissions from the parties

5. On 6 April 2015, changes to pensions were implemented under the new pensions freedom legislation. As a result of these changes, from 6 April 2015 onwards, it was no longer possible to transfer out from unfunded DB public sector pension schemes, into a flexible DC arrangement. In this context, "flexible" means the ability to elect a tax free cash sum and income drawdown from age 55.
6. In May 2015, Mr Y contacted Financial Conduct Authority **(FCA)** Regulated Financial Advisors "Portafina LLP", previously known as Portal Financial, in relation to a potential transfer out from the Scheme. Portafina LLP proceeded as Mr Y's Independent Financial Advisor **(the IFA)**.
7. On 11 June 2015, HSC, the administrators of the Scheme, received a Cash Equivalent Transfer Value **(CETV)** request from the IFA. On the same day, HSC also

received a letter of authority, allowing the release of other pensions information to the IFA.

8. On 16 June 2015, HSC made a request to Her Majesty's Revenue & Customs (**HMRC**) for the Guaranteed Minimum Pension figures required to calculate Mr Y's CETV. This information was received on 29 June 2015.
9. On 23 July 2015, HSC made a request to Mr Y's employer, Northern Ireland Ambulance Service, for his current salary information. HSC received a response from Mr Y's employer the following day.
10. On 26 July 2015, HSC contacted the IFA to request some further details needed to finalise the calculation of Mr Y's CETV.
11. On 28 July 2015, the IFA telephoned HSC to obtain an update on the progress in supplying the requested CETV. HSC advised the IFA at this point that legislation changes had been implemented in April 2015, therefore it needed to know if the receiving scheme was a DC arrangement.
12. On 5 August 2015, HSC finalised Mr Y's CETV and issued it to the IFA. In its covering letter, HSC advised that if Mr Y intended to transfer his pension, it must be advised of what type of transfer this would be, that is, if this was to be a Club or Non-Club transfer.
13. On 28 August 2015, the IFA wrote to Mr Y to confirm that it had received the necessary information and CETV from HSC. It confirmed to Mr Y the maximum tax free amount he could access under a SIPP arrangement, and advised that the next step was to arrange a telephone call to obtain further information from Mr Y about his circumstances. The purpose of this call was also to confirm what options were available to Mr Y, and which of these were the most suitable.
14. On 3 September 2015, HSC received a request from the IFA to provide a current benefit statement for Mr Y. It advised the IFA that Mr Y would need to apply through his employer for this information.
15. On 6 October 2015, the IFA telephoned Mr Y to conduct a Suitability Assessment. During this call, the IFA obtained further information from him regarding his circumstances and future plans, and discussed the options available to him.
16. On 14 October 2015, the IFA wrote to Mr Y to follow up from the Suitability Assessment call. This letter confirmed that Mr Y's wish to release a cash lump sum from the Scheme was against its recommendation.
17. On 21 October 2015, the IFA released its Flexi-Access Drawdown Suitability Report. In this report, it recommended that Mr Y leave his pension benefits with HSC. However, as Mr Y had confirmed he wished to proceed with a transfer regardless, and that he understood the pension benefits he would be losing, the IFA agreed to continue on an 'insistent client' basis.

18. On 16 November 2015, HSC received a request form from AEGON to initiate the transfer of Mr Y's pension benefits with the Scheme into the AEGON SIPP.
19. On 26 November 2015, the IFA called HSC for an update regarding the progress of the transfer. During this call, it informed the IFA that it was unsure if Mr Y would be allowed to transfer his pension to the AEGON SIPP, due to the legislation changes in April 2015. HSC advised it would look into this.
20. On 3 December 2015, the IFA telephoned HSC for an update on the transfer. HSC advised that Mr Y was still showing as an active member of the Scheme, and he would need to contact his employer to opt out before a transfer request could be processed.
21. On 17 December 2015, HSC received a notice of Mr Y's termination of scheme membership, as required in order to proceed with a transfer.
22. On 14 January 2016, HSC issued a letter to AEGON providing an estimated transfer value of benefits if Mr Y was to proceed. A final CETV was sent to the IFA on the same day.
23. On 1 February 2016, AEGON wrote to HSC advising that Mr Y wished to proceed with a transfer of his benefits. This was confirmed in a letter from the IFA dated 5 February 2016.
24. On 24 February 2016, HSC contacted the IFA to advise that a review had confirmed that Mr Y's intended transfer was to a DC arrangement, and therefore could not be completed due to the April 2015 legislation changes. The IFA requested that HSC telephone Mr Y directly to explain this to him, which it did. HSC also wrote to AEGON to advise that the transfer of benefits could not proceed.
25. On 2 March 2016, Mr Y wrote to this office to obtain advice regarding his complaint with HSC. Mr Y sent a copy of this letter to HSC directly. Mr Y's letter was passed to The Pensions Advisory Service (**TPAS**), in line with our procedures.
26. On 8 March 2016, HSC responded to Mr Y's complaint. HSC initially informed Mr Y that, despite his request, it was not possible to make an exception to transfer his DB benefits to the AEGON SIPP as the legislation preventing such a transfer was passed by the UK Government, therefore HSC did not have discretion to transfer his Scheme benefits.
27. HSC provided a timeline of events relating to Mr Y's transfer request and concluded that it would not have advised a member to opt out of the Scheme. However, HSC was willing to exceptionally allow Mr Y to opt back into the Scheme, and it would extend its usual deadlines to enable Mr Y to pay the outstanding contributions, following his opt-out in December 2015, to re-instate his missing service.

28. On 17 March 2016, Mr Y wrote to HSC, disagreeing with its comments on his complaint. He requested clarification on why HSC did not at any point advise him or the IFA that his transfer was not allowed under new legislation, and argued that a CETV request and the correspondence that followed should have made it clear that his intention was to transfer. Mr Y concluded that the anxiety caused warranted a payment of compensation.
29. On 23 March 2016, TPAS responded to Mr Y's letter advising that he needed to write to the party/parties he believed to be at fault, outlining his complaint, and allow them the opportunity to respond. TPAS also requested Mr Y provide copies of previous correspondence relating to his complaint.
30. On 6 April 2016, HSC responded to Mr Y's further complaints. It advised that it would be unprofessional to assume every member requesting a CETV estimate wanted to actually transfer their benefits. HSC further stated that the processes allow for a member to communicate with schemes to obtain information and make a decision on whether to proceed with a transfer. Finally, HSC stated it could not accept responsibility for Mr Y's worry and trauma, as it only received his actual confirmation to proceed with the transfer on 1 February 2016.
31. On 18 April 2016, Mr Y reverted to TPAS. He sent copies of the recent complaint correspondence he had received from HSC, and reiterated that it was his belief that the numerous requests to HSC for salary information and other documents should have made it clear that his intention was to transfer his pension from the Scheme. Mr Y stated that he had suffered financially as a result of HSC's mistake and felt he was at least entitled to some compensation.
32. On 11 May 2016, TPAS responded to Mr Y's letter. TPAS noted that the initial CETV enquiry was received by HSC in June 2015, after the legislation had changed. TPAS considered that the IFA, who had made the CETV request, may have been aware of these changes. TPAS concluded that Mr Y would need to request that his complaint be considered under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), if he wished to pursue the matter. TPAS clarified that HSC did not have discretion to allow the transfer.
33. On 8 June 2016, Mr Y completed and returned the Stage 1 IDRP application form. In his submissions, he said he felt he had been treated very poorly by HSC and had not yet received an apology. Mr Y queried why a review had been carried out on his transfer request in February 2016 – which confirmed the transfer was not possible. Mr Y said he had been shocked to be told his transfer could never have been allowed and, having purchased items in expectation of receiving a lump sum, he had been left humiliated at having to seek financial assistance from the Citizens Advice Bureau. He requested a review of his complaint and payment of compensation.

34. On 24 June 2016, HSC issued its stage 1 IDRP response. It first apologised for any stress the situation had caused Mr Y. HSC then explained that when a transfer payment is being calculated, a supervisor will carry out a thorough review before the payment can be authorised. These reviews are carried out on all actual calculations as part of the process at HSC. Mr Y's request for compensation was rejected as HSC does not make provision within the Scheme regulations to make such payments.
35. In September 2016, Mr Y progressed his complaint to Stage 2 of the IDRP. He confirmed his position that he placed no blame on the IFA in this matter. Mr Y argued that given the limited time between the change in legislation, and the CETV request, a member of HSC staff should have queried this. Mr Y stated that HSC should take responsibility for its mistake and not simply pass the blame to the IFA. Further, he concluded that whilst the Scheme may not have provision to pay compensation, the umbrella department would be able to allow this.
36. On 18 October 2016, HSC issued its stage 2 IDRP response. It concluded that Mr Y's case had been treated with due diligence and that the correct process had been followed to provide the IFA and AEGON with a CETV. On Mr Y's instruction, HSC had dealt directly with the IFA, and later AEGON. HSC said it would have expected the IFA to have made Mr Y aware from the outset that the transfer could not take place, and Mr Y's complaint was not upheld.
37. On 10 November 2016, Mr Y wrote to this office requesting his complaint against HSC be investigated. He stated he had been depending on the lump sum payment and therefore requested an apology and compensation from HSC. Mr Y said that despite the IFAs assurances of not knowing that changes to the legislation had been implemented, HSC continued to blame the IFA for not informing him his transfer would not be allowed. Mr Y said he had not been surprised that HSC did not uphold his complaint as, in his opinion, its complaints department was not impartial.
38. On 29 November 2016, following our request, an application form was received by this office in relation to Mr Y's complaint. He stated that neither he, nor the IFA were made aware of any problems that could affect his transfer until February 2016. On the strength of the correspondence received, Mr Y had purchased 'essential items' for his home at a cost of over £10,000. Mr Y said he is now facing significant financial hardship, for which he believes HSC is to blame, and therefore Mr Y has requested reasonable compensation.

Adjudicator's Opinion

39. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by HSC. The Adjudicator's findings are summarised briefly below.
 - A request for a CETV does not constitute an actual request to transfer. In any event, details of the receiving scheme had not been received by HSC at the time

of receiving the CETV request, therefore, it cannot be reasonably concluded that HSC should have known and informed Mr Y at this point that the transfer was not possible.

- Even if the IFA was not initially aware Mr Y intended to transfer to a SIPP, this should have become apparent during the Suitability Assessment in October 2015. It is not unreasonable to expect the IFA to be aware of any limitations or changes to legislation that may affect the ability to transfer to Mr Y's chosen arrangement.
- HSC initially made the IFA aware that there had been legislative changes and of the requirement to know if the receiving scheme was a DC arrangement, as early as July 2015. It appears that this information was not supplied to HSC and if it had been, any loss of expectation or disappointment resulting from the inability to transfer could have been avoided from the outset.
- HSC only became aware that Mr Y intended to transfer his pension into a SIPP in November 2015. Following this, it informed the IFA that it would have to review Mr Y's transfer request, as the April 2015 legislation changes may prevent this. Whilst HSC could have completed its review much sooner, the restrictions on the transfer of unfunded DB pensions could reasonably have been brought to Mr Y's attention much earlier than the date on which HSC first became aware of the intended receiving arrangement.

40. Mr Y did not accept the Adjudicator's conclusions and the complaint was passed to me to consider. Mr Y provided further comments which do not change the outcome. I agree with the Adjudicator's findings, summarised above, but I will, for completeness, respond to the key points made by Mr Y in his letter of 17 February 2017.

Ombudsman's decision

41. Mr Y has, in my view, produced no new evidence to support his case against HSC. Reference has been made to existing points, with some additional comments following the Adjudicators findings. These points are summarised below.

- Mr Y states that, whilst a CETV request does not constitute a request to transfer, if there is even a remote possibility this will result in a transfer request, the Scheme has a responsibility to inform the member at this point of any legislation and restrictions that may affect this.
- Mr Y refutes that any blame should be apportioned to the IFA in this matter, and contends that no financial advisor would continue to request information from a scheme and pursue a transfer request, knowing this would not complete.
- Further, Mr Y argues that if HSC discovered in November that the receiving arrangement was a SIPP, it should have informed Mr Y directly of any potential issues and advised him accordingly.

- Mr Y is of the view that HSC should have been fully versed in the legislative changes of April 2015, and therefore, after clarifying the receiving arrangement was a SIPP, a lengthy review should not have been necessary as it should have been immediately clear that his transfer could not be processed.
 - Mr Y believes that he was misled by HSC into thinking he would be able to transfer his pension into a SIPP and have immediate access to a cash lump sum. As a result, he has incurred significant debt and he should receive reasonable compensation for this.
42. The Adjudicator has already explained that a CETV request does not constitute an actual request to transfer benefits from the Scheme. I do not think it is realistic to expect a scheme to treat every CETV request as an intention to transfer, or to advise members regarding the legislative position. Indeed, it is not uncommon for a member to request a CETV from their scheme without planning to transfer out their benefits. In my view, it is not unreasonable for a scheme to assume a member wishing to transfer would be aware of any legislation affecting this, or to have sought financial advice to confirm the position as it is now a requirement of the legislation that members with a CETV in excess of £30,000 must obtain financial advice.
43. The telephone notes supplied by the IFA show that HSC first asked for information on the receiving scheme on 28 July 2015, and it does not appear this was provided. On 5 August 2015, when the CETV estimate was issued there was another opportunity for the IFA to confirm where the CETV was going, as HSC requested confirmation on whether or not this would be a “Club” transfer. A Club transfer is usually a transfer from one public sector salary related scheme to another on special terms. Club transfers are, therefore, only applicable to DB schemes, and this information ought to have highlighted to the IFA that only a transfer to a DB scheme would be possible.
44. The IFA confirmed to Mr Y in its letter of 28 August 2015, the tax free cash lump sum he would be able to access. It appears to have been clear at this point, from the IFA’s perspective at least, that Mr Y was intending to transfer to a flexible DC arrangement where he could immediately access a 25% tax free lump sum. Despite the fact that HSC had twice requested information on the receiving arrangement, the IFA did not communicate this information to HSC.
45. I agree with Mr Y, I would not expect an IFA to knowingly pursue a transfer in full knowledge that legislation would prevent it from being completed. In this case perhaps the IFA either did not know about the April 2015 legislation changes, or it was unaware that the Scheme Mr Y was transferring from was an unfunded public sector DB arrangement. Whatever the reason, it is not relevant as Mr Y’s complaint is not directed against the IFA. However, it is the position of this Service that any IFA firm which is FCA Regulated, should have been aware of these legislation changes being implemented on 6 April 2015, given the changes were widely communicated to pension professionals.

46. Mr Y states that HSC should have contacted him directly in November 2015, to inform him it would need to review if his transfer request was legally possible. Unfortunately, I cannot agree with Mr Y. In this situation, Mr Y was a client of Portafina LLP, not HSC. Mr Y procured the services of the IFA to assist in the transfer process, and he gave his authority to HSC to liaise with the IFA directly, as his representative. Any information relating to the transfer would therefore be communicated between HSC and the IFA, and it is not unreasonable for HSC to expect that the IFA would pass on such important information to Mr Y.
47. I recognise that HSC could have informed the IFA, or Mr Y, earlier in the process that he would need to opt out the Scheme before he could get a guaranteed CETV, however, as I have mentioned above, it would not be reasonable for HSC to assume that every request for a CETV estimate would result in an actual request to transfer out. It is not HSC's responsibility to encourage members to leave the Scheme, or to give advice on the consequences of opting out.
48. Mr Y states that he has incurred significant debt as a result of 'essential' household purchases made when he thought the transfer was going ahead. Mr Y is of the opinion that, because he was led to believe his transfer would complete without any problems, HSC is at fault for the financial loss he has now suffered.
49. Although the transfer did not complete and Mr Y is unable to immediately access his pension flexibly within a SIPP, he still retains his benefits in the Scheme so there has not been an actual financial loss, but rather a loss of expectation (albeit it is significant in his view). Where maladministration is found to have caused a non-financial loss (distress and inconvenience), a direction can be made for payment of compensation. I do not agree that the actions of HSC constitute maladministration in this case, and I am making no direction for compensation.
50. It could be argued that these "essential" purchases needed to be bought regardless of the fact Mr Y was trying to unlock tax free cash in his pension. Mr Y has stated that he began to make the purchases in late October 2015, when he believed the payment of a lump sum was imminent. However, as HSC only received Mr Y's actual confirmation of the transfer to an AEGON SIPP in mid-November 2015, HSC cannot be held responsible for the financial decisions or actions taken by Mr Y in the interim.
51. It must also be noted that Mr Y chose to pursue this transfer against the advice of the IFA, and as such, he was treated as an "insistent client". The decision to continue was taken at Mr Y's own risk, and on that basis I cannot agree that any compensation payment towards his debts is merited.
52. We are an impartial service and our role is to weigh up the evidence provided by both Mr Y and HSC and come to an independent view. Where a party is considered to be at fault, a direction is usually made to put the individual back into the position they would have been in, had no mistake occurred. Whilst I do not consider HSC to be at fault in this complaint, I do accept that the time taken to carry out a review of Mr Y's

transfer request was longer than it should have been and, as a result, Mr Y opted out of the Scheme in December 2015, 2 months prior to the review being completed and Mr Y being informed the transfer could not proceed.

53. HSC has clearly stated that the option remains open to Mr Y to opt back into the Scheme, and it will exceptionally extend the deadline for him to pay any outstanding contributions from the date of re-joining, in order to reinstate his lost pensionable service. In my view this invitation by HSC is sufficient to put Mr Y back into the position he would have been in had he not opted out of the Scheme.
54. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
28 February 2017