

Ombudsman's Determination

Applicant	Mr E
Scheme	Local Government Pension Scheme (LGPS)
Respondents	Lincolnshire County Council (LCC)

Outcome

1. Mr E's complaint against LCC is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) LCC should pay Mr E £750 in recognition of the non-financial loss he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E is complaining that LCC:
 - refused to allow a transfer out of the LGPS;
 - failed to inform him that there was a deadline limiting his right to transfer; and
 - failed to inform him that he had only two options, to either transfer out or take a refund of contributions.

Background information, including submissions from the parties

4. Mr E left his employment with LCC in April 2003 and ceased to be an active member of the LGPS. At the time of leaving, he had accrued less than two years' service in the scheme.
5. The relevant legislation at the time Mr E left service stated that, as he had less than two years' service, he was entitled to a refund of his contributions with interest¹ or a transfer out of the LGPS up until his 64th birthday² (12 months before the LGPS's normal retirement date).

¹ LGPS Regulations 1997, Regulation 19 and 87

² Section 95 of the Pension Schemes Act 1993

6. In 2005, Mr E gave permission for an independent financial advisor (**IFA**) to contact LCC about his benefits. LCC responded on 6 January 2006:

“I can confirm that Mr ... benefits are currently held as a frozen refund because he had insufficient service to provide a deferred benefit.

His only options are to apply in writing for the refund to be paid or to transfer the benefits to another pension arrangement.”

7. Mr E does not recall discussing this with his IFA at the time.
8. On 21 October 2007, Mr E emailed LCC and asked why he had not received an annual statement of his deferred benefits. In response, LCC sent Mr E a cash equivalent transfer value (**CETV**) quote, along with the appropriate forms. The CETV incorrectly provided an estimate of Mr E’s deferred benefits in the LGPS.
9. In 2009, Mr E contacted a second IFA who requested details of Mr E’s benefits. On 15 April 2009, LCC sent a CETV quote (with the necessary forms to allow the transfer) to Mr E’s new IFA. This time, the quote said:

“No deferred benefits are held only service on your record as you have less than two years membership in the scheme. Therefore if you decide not to proceed with the transfer your only option is to claim a refund.”

10. Mr E states that he decided not to pursue advice through this new IFA and does not recall seeing the 2009 CETV.
11. On 2 November 2012, Mr E turned 64, meaning that, under the relevant legislation he was no longer entitled to a transfer out of the LGPS.
12. In 2013, Mr E again requested details about his pension entitlement. On 16 August 2013, LCC emailed Mr E³:

“I refer to your recent request for pension figures. I have put in the post options to claim a refund and also discharge forms if you decide to transfer your benefits. As your record is frozen (less than two years service) you are not entitled to a pension benefit. If you decide to take a refund the net amount would be £378.80, on request interest would also be added. The transfer value would be £2,814.63 if you decide to transfer to another pension scheme.”

13. Like the 2007 CETV, the August 2013 CETV quote also incorrectly provided an estimate of Mr E’s deferred benefits.
14. In January 2014, Mr E telephoned LCC to query why he does not have any deferred benefits. LCC’s file note dated 21 January 2014 says:

“Mr ... rang to query why he does not hold a deferred benefit – I confirmed it was due to the regulations at that time. Info was sent to his Financial advisors in 2006

³ This was emailed again to Mr E on 23 December 2013

to confirm his only entitlement was to have a refund or transfer. Mr ... is not happy he did not receive a copy of that letter (but his instruction was to send all info to them). I checked the fiche he did not get a letter or leavers guide it was done as a valuation leaver. He will be writing in to complain that he does not hold a deferred benefit.”

15. The telephone note is followed by an email to Mr E, dated 22 January 2014. LCC confirms that the only payment that can be made is a refund of contributions and asked for Mr E’s bank account details.
16. There is no response to this email and, in October 2014, Mr E sends LCC partially completed transfer forms. LCC wrote to Mr E on 21 October 2014 and asked for the section to be completed by his new pension provider.
17. On 18 November 2014, LCC wrote again to Mr E:

“We refer to our recent letter regarding the transfer out to the Alliance Trust Pension Scheme and note that we have not received your discharge forms.

In the absence of a reply your record will stay as frozen.

Please note you can request a refund or transfer value of your frozen contributions at any time.

If you wish to proceed, you will need to complete all the forms sent with our previous letter.”
18. On 26 May 2015, Mr E emails LCC again asking for full details of his deferred pension entitlement. LCC responded by letter on 27 May 2015 confirming that he could leave his contributions in the fund (if he believed that he might take up employment again within local government) or he could take a refund of contributions, plus interest. A refund option form was also provided.
19. Mr E proceeded to complain to LCC about the inability to transfer out. He complained through the LGPS internal dispute resolution procedure (which did not uphold his complaint) and eventually to my office. During our investigation, LCC offered Mr E £750 to recognise the non-financial loss he had suffered because of misinformation they had provided to him.

Adjudicator’s opinion

20. Mr E’s complaint was considered by one of our Adjudicators who concluded that part of the complaint should be upheld. The Adjudicator’s findings are summarised briefly below:
 - Mr E is receiving his correct entitlement from the LGPS, which is a refund of his contributions plus interest. As he is over 64, he is no longer entitled to a transfer out of the LGPS.

- LCC had provided correct information regarding the two options available to Mr E in 2006 and 2009, at his request, to his IFAs. LCC were not responsible for whether or not the IFAs shared this information with Mr E. The Adjudicator felt that it would be reasonable that, having asked for a review of his financial position to the point of requesting information from LCC, that it would have been prudent for him to have checked or discussed the information received with his advisors.
- It was recognised that there had been poor administration by LCC in their communication with Mr E over the years, in particular:
 - the CETV dated 2 November 2007 incorrectly showed a deferred benefit;
 - in August and December 2013, LCC made Mr E aware of his options but failed to identify that he was over 64 and therefore no longer entitled to a transfer. Therefore the information provided was incorrect;
 - LCC failed to inform Mr E that there was a deadline to transfer and exacerbated the situation by informing him in the letter dated 18 November 2014 that he could transfer at any time. This information was also incorrect.
- The Adjudicator's opinion was that LCC's offer of £750 to recognise the non-financial loss Mr E had suffered because of their actions was reasonable.

21. Mr E is disappointed with the views of the Adjudicator. Mr E feels that LCC's offer of £750 does not take into account his significant financial loss. At the very least, LCC should be offering him an updated CETV or his deferred pension rights.

22. 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. I agree with the Adjudicator's opinion, summarised above, and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

23. Mr E is unhappy that LCC have not offered to redress what he says is his financial loss. While Mr E disagrees, by being offered a refund of his contributions, plus interest, he is being offered his correct entitlement from the scheme. LCC cannot provide him with deferred benefit options or a transfer, as this is not legally permitted. I therefore agree that the only option available to Mr E is a refund and note that he has until his 75th birthday to request this.

24. If Mr E felt so strongly about his right to transfer, he had plenty of opportunity to avail himself of this option. From when he left the LGPS in April 2003 until his 64th birthday in 2012, Mr E had sought advice from two IFAs, a general request to LCC for information about his entitlement and was issued with two CETVs. If his intention

PO-12928

was to transfer, then he had the option to do so at any time during this nine year period.

25. I agree that the information provided to Mr E over the years has been, at times, misleading and incorrect. I also agree that LCC failed to make Mr E aware of the deadline to transfer and this was compounded by further misinformation sent to Mr E. However, I also note that Mr E contributed to this as well. In particular, I see that when he was provided with information in January 2014 that he was only entitled to a refund, he seems to have ignored this and sent in incomplete discharge forms nine months later. Therefore, the £750 offered to Mr E is more than fair.
26. Therefore, I partially uphold Mr E's complaint.

Directions

27. Within 21 days from the date of the Determination, LCC will pay Mr E £750.

Karen Johnston

Deputy Pensions Ombudsman
23 November 2016