

Ombudsman's Determination

Applicant	Mrs G
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Derbyshire Pension Fund (DPF), administered by Derbyshire County Council (DCC)

Outcome

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

Complaint summary

3. Mrs G's complaint is solely against DPF in its failure to process a Cash Equivalent Transfer Value (**CETV**) within 12 months of her Normal Retirement Date (**NRD**) in the Scheme. As a result, Mrs G says she has lost all future flexibility in accessing and disposing of her pension benefits from a Self-Invested Personal Pension (**SIPP**).

Background information, including submissions from the parties

4. A comprehensive timeline is unnecessary because the background and sequence of events is not disputed by either party.
5. Mrs G left DCC employment through resignation on 31 December 2015. She then received a retirement pack from DPF dated 28 January 2016. Mrs G subsequently requested a CETV 'statement of entitlement' (option 4 under the retirement pack) from DPF on 3 February 2016, following a meeting with an IFA firm on the same day. This was more than 12 months before her NRD (18 March 2017, age 65).
6. The IFA firm submitted a Letter of Authority (**LOA**) to DPF for general pension information and a CETV on Mrs G's behalf three weeks after her initial meeting with a financial planner. In its communication there was no mention of any urgency around the CETV, Mrs G's health or that she wished to proceed with a transfer to a SIPP. Throughout this process Mrs G had only ever asserted her wish to explore option 4, which involved deferring her benefits in the Scheme, as she wanted "information so that [she could] make an informed decision ...before proceeding any further."

7. CETV information was issued by DPF to Mrs G and an IFA firm on 17 March 2016, one day before Mrs G' crossed the 12 month threshold.
8. The IFA firm later requested additional CETV information, and a benefit statement, which DPF sent on 29 April 2016. CETV information could not be supplied and DPF said Mrs G could no longer transfer to a SIPP because she fell outside the statutory right to a transfer value under section 95 of the Pension Schemes Act 1993 (**PSA93**). Regulation 96 of the Scheme Regulations 2013 only permits Mrs G to transfer out her benefits in the Scheme under the circumstances as set out in the PSA93¹.
9. Because Mrs G did not make an 'election to proceed' with a transfer to a SIPP 12 months *before* she reached her NRD, she lost her right to a statutory transfer value.
10. Mrs G formally complained to the Director of Finance on 7 May 2016. In her letter she confirmed she was terminally ill, and had spent a great deal of time pursuing the CETV option. Mrs G also said she had consulted an IFA firm explaining her illness and that time was limited. She said the IFA firm had agreed to expedite her CETV application because it was known to be a "slow and bureaucratic process".
11. DPF said there was no mention of Mrs G's illness when her initial request was made in February, and it was mentioned for the first time on 7 May 2016. The DCC decision maker to the complaint said it was regrettable the retirement pack issued on 28 January 2016, had missed the fact she was close to her 64th birthday. But it was agreed that the CETV information sent on 17 March 2016 made no reference that an 'application to proceed' had to be returned by 18 March 2016. The complaint was upheld and Mrs G was offered £3,000 and £1,000 for distress and inconvenience.
12. Mrs G rejected the offer. Her claim for compensation was around £77,000. This being the 'cash' value of the survivor pension and death grant as if the CETV been paid to a SIPP. Throughout the complaint Mrs G has stated she receives no financial benefit of the spouse's pension or death grant as that would be paid to her estate and not her.

Adjudicator's Opinion

13. Mrs G's complaint was considered by one of our Adjudicators who concluded that no further action was required by DPF. The Adjudicator's findings are summarised below:-
 - Although the subject matter is relatively straightforward, it is the actions of the parties involved and sequence of events that followed which are complex.
 - Mrs G's circumstances were not 'routine', and her terminal illness cannot be ignored. Mrs G said herself it was her "circumstances" that "forced" her into resigning her position, and by this she meant her health. The Adjudicator therefore

¹ See Appendix - section 95, PSA93

said it was appropriate for Mrs G, or the IFA firm to communicate that information to DPF.

- When DPF produced Mrs G's retirement options it was unaware of her ill-health. It treated her as a routine leaver, over age 60, who was able to access her pension immediately. Although DPF is part of DCC it was unaware of her illness. If DPF had been party to ill-health discussions with HR or Occupational Health, more appropriate retirement options could have been presented to Mrs G.
- Omission of the 18 March 2016 date under option 4 was not considered actual maladministration as DPF were producing a retirement pack, not CETV options. A vigilant administrator might have picked this up, or it would have been helpful to include a general warning that CETV rights were lost within 12 months of NRD.
- Mrs G's meeting on 3 February 2016 was with a financial planner, and not with a regulated IFA. Therefore, no advice was given and no commitment to transfer to a SIPP was agreed at the initial meeting. Mrs G had signed a LOA during the meeting, and on the same day she emailed DPF saying she wanted "information" about a CETV to make an informed decision. There was no mention of ill-health, an IFA being appointed, a transfer to a SIPP, or any urgency behind her request.
- DPF acknowledged Mrs G's email asking if she intended to transfer out. Mrs G did not respond and so a further opportunity was lost to communicate her ill-health, or the urgency behind her request. However, at this stage maladministration did occur because the DPF administrator had an opportunity to check its records and establish if Mrs G was within 12 months of NRD. The Adjudicator concluded that either DPF had no process in place to check this, or the existing process was overlooked. However, as the CETV request was for "information" only at that point in time there was no certainty a CETV would ever proceed.
- The signed LOA was only sent to DPF on 26 February 2016 by the IFA firm, three weeks after the initial meeting on 3 February 2016, demonstrating no urgency behind the request, no intention to transfer to a SIPP, and no mention of Mrs G's health which she says was discussed at the initial meeting.
- By the time DPF issued CETV details on 17 March 2016 it was effectively too late for Mrs G to make a transfer. Full blame could not be placed solely on DPF because even at that time, when the 12 month deadline was relevant, it remained unaware of Mrs G's personal circumstances or her desire to disperse pension assets from a SIPP.
- Mrs G decided to proceed with a transfer towards the end of April 2016. But the IFA firm had to request further information and a split of the pre/post 1997 CETV, clearly indicating no financial advice had been given to Mrs G as to the suitability of the proposed transfer to a SIPP, despite any intentions to proceed.

- The IFA firm's actions contradict what Mrs G said to this organisation in May 2016. She said that during the initial meeting her illness was explained and her wishes for the dispersal of her estate were communicated, implying a firm decision to transfer to a SIPP was made as early as 3 February 2016. She said the IFA firm was aware that time was limited and it had agreed to expedite her application.
- If a decision had been made as early as 3 February 2016 then it had not been communicated to DPF, and Mrs G would not have emailed DPF the same day requesting "information". And, the IFA firm would not have sent in a LOA; it would have requested discharge forms and all the information it needed (pre/post 1997 CETV split) to provide advice to Mrs G. The IFA firm later said it had only discussed "the possibility" of moving her benefits to a SIPP in light of her illness.
- The Adjudicator said Mrs G had not made a decision until the end of April 2016 by which time it was too late. DPF cannot be expected to expedite an urgent CETV request unless asked to do so. As Mrs G left DCC through resignation it was her responsibility, or the IFA firm, to expedite any request, as DPF only found out about her illness when she complained to the Finance Director on 7 May 2016.
- The IFA firm and Mrs G were at cross purposes when it came to timeframes. The IFA firm considered DPF provided CETV information in a normal timeframe, whereas the timeframe that would follow an instruction to proceed might take much longer.
- It was agreed that DPF could have done more to signpost the 18 March 2016 date on the retirement pack, but it was considered all parties were at fault in some capacity. There had been a lack of communication and miscommunication between Mrs G and the IFA firm and then with DPF. The IFA firm and Mrs G had only communicated a request for CETV information to make an informed decision.
- All "relevant information" had not been disclosed to DPF which was a key part in the CETV not progressing fast enough, even though it was accepted in principle that DPF wanted to try and put Mrs G into the position she would have been in.
- Despite the maladministration, the Adjudicator said, an Ombudsman, in his view, would not make a direction which would purposely result in an unauthorised payment being levied against Mrs G and the Scheme. Mrs G had not suffered an *actual* financial loss as she was in receipt of the correct level of benefits from the Scheme. Her loss was one of expectation because she placed no value on the spouse's pension or death grant which makes up a large proportion of the CETV.
- Mrs G (and the IFA firm) did not make her intentions clear that she wanted to proceed with a transfer to a SIPP before 18 March 2016. And, she failed, or chose not to disclose relevant information to DPF, which could have facilitated a CETV taking place before she was within 12 months of her NRD.

14. Mrs G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr M (Mrs G's personal representative) provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and will only respond to the key points made by Mr M for completeness.
15. Mr M made the following comments which are summarised below:-
- Reference was made to the Opinion that omission of the relevant transfer date in the retirement pack was not considered maladministration. Mr M said the Adjudicator's view had altered since his earlier email dated 2 December 2016, saying "their [DPF] actions amount to maladministration".
 - It remains in dispute that Mrs G has not suffered an actual financial loss, or that she was in receipt of the correct benefits from the Scheme. Mr M says it is only her dependants who are not financially worse off by Mrs G remaining in the Scheme. He says she has suffered a financial loss of c. £77,000, this being the £40,000 cash value placed on her spouse's pension (if paid to her husband for 20 years), and £37,000 which would be paid to her estate as a death grant.
 - Had the CETV had gone ahead, Mrs G would have full "control" over the entire cash sum, to spend, or dispose of it as she wished. These funds would now be paid to her spouse and estate, a situation Mrs G was trying to avoid by transferring to a SIPP. Mr M feels a key point is being overlooked in that a "spouse's pension and death benefit are all paid AFTER [Mrs G's] death and NOT TO [MRS G]".
 - DPF agreed in principle that Mrs G "should be restored to the position she would have been in, had her intentions to transfer out been progressed at the appropriate time taking into account all relevant information". Mr M agrees with that as being the basis of a suitable remedy but he says "relevant information" was the CETV deadline, whereas the Adjudicator considered it meant disclosure of Mrs G's illness to DPF because time was also a relevant factor.
 - DPF applied "arbitrary values" to come up with the compensation offer of £3,000. Mr M says this cannot be considered a remedy as the calculation is "crude and irrelevant", indicating "a complete lack of understanding" of Mrs G's complaint and the benefit of her transferring to the SIPP.
 - Everything in the Opinion attaches blame to Mrs G's illness which Mr M considers to be a "Red Herring". He says it is unfortunate her illness did not inject a greater sense of urgency into those dealing with her CETV, but the mention of her illness disproportionately moves blame away from DPF onto the IFA firm instead for not acting as urgently as it could have. Had the transfer deadline date not been omitted from the transfer pack he believes it would have expedited her CETV request.
 - If DPF had been aware of Mrs G's illness, or terminating employment through ill-health instead of resignation, he doubts it would have expedited the CETV because of the bureaucratic nature of the Scheme, and the processes it followed. Mr M says

that because her line manager and Occupational Health were aware of her illness this should have “triggered some sort of intervention or at least a question”.

- The Opinion makes no reference to his own proposed remedy previously put forward. Mr M believes a gross compensation payment of £96,000, less income tax, would equate to around £75,000 net, the actual financial loss Mrs G has suffered.
- Mr M says that, on “his advice”, Mrs G had elected option 4, transfer to a SIPP, and because of her medical condition, this was the best option, as “it gave HER full value and complete control of her pension monies”. Option 4 did not state the 18 March 2016 deadline; if it had he has no doubt everybody involved would have acted more expeditiously and a satisfactory outcome would have been the result.

Ombudsman’s decision

16. Any informal views of the Adjudicator on 2 December 2016 stand and the Adjudicator, as far as I am concerned, has not changed his view. There is no dispute around what maladministration took place, and DPF accept a mistake occurred around the CETV process. In the Opinion outcome (paragraph 2.) the Adjudicator said he agreed with the complaint, but said no further award was likely to be made by an Ombudsman.
17. The matter to be determined is therefore should DPF be directed to transfer Mrs G’s retirement benefits in the Scheme to a SIPP. In my opinion that action cannot now happen because whilst I do agree maladministration took place, I do not agree that injustice flowed from that maladministration in the form of an actual financial loss.
18. Mr M’s own proposed remedy was not ignored; this was covered in paragraph 26 of the Opinion. In December 2016 the Adjudicator was dealing with Mr M, DPF and DCC on an *informal* basis, with an aim that matters might be resolved. However, during December 2016 it was clear Mr M’s proposed remedy could not be accepted by DPF, and the Scheme could not find a way to meet his suggested “out of court” settlement.
19. I accept Mrs G cannot access her benefits in the way in which she perhaps wished, but that does not mean she has suffered a financial loss. The Scheme was designed to provide for spouse and death benefits; it therefore follows that any CETV calculated by DPF would incorporate a proportion of those survivor/death benefits.
20. It is only the recent changes in pensions (freedom) legislation that has permitted individuals to access their pension benefits from age 55 onwards in a cash format, rather than take their benefits from a scheme. I accept that individuals now have freedom to access their retirement income as “cash” before reaching their schemes NRD, and I fully understand Mrs G’s desire to have full control over her pension assets but her reasons for doing so are not financially justified; they are for personal reasons.

21. An appropriate ill-health application could have provided a similar outcome if Mrs G is terminally ill. As she had been medically signed off work for some time, a fact known by her employer, HR and Occupational Health, the correct procedure for potentially accessing her scheme benefits as a cash lump sum was by making an application for serious ill-health commutation (if life expectancy is limited). Although not part of the complaint made, Mrs G's departure of 'resignation' was wholly inappropriate for her circumstances, and is a contributing factor to the complaint now being determined.
22. Mr M does not agree DPF would have acted any differently, or expedited the CETV, had it been aware of Mrs G's illness because of the "beaurocratic processes" followed by the Scheme. Yet, he believes Mrs G's illness should have "triggered some kind of intervention". DPF would only be aware of Mrs G's illness if she had left employment on the grounds of ill-health. Given the seriousness of Mrs G's illness I am of the view that DPF would have expedited a CETV request had it been fully aware of Mrs G's circumstances. However, DPF were not aware of Mrs G's illness during the period of her resignation and before she lost her statutory right to a CETV.
23. I cannot agree with Mr M when he says the Adjudicator used Mrs G's illness as a way of passing blame from DPF on to the IFA firm. The Adjudicator concluded that "all parties concerned", which includes Mrs G, were equally at fault for the failure of the CETV not being processed and I agree. But for absolute clarity, the IFA firm is not a respondent in this complaint and despite what Mr M says, it is clear that Mrs G received no financial advice or had a firm recommendation from an IFA to proceed with a CETV. Mr M says his "advice" to Mrs G was to take option 4, but with the greatest of respect, he is not authorised to give advice. Perhaps more importantly, there is no evidence that Mrs G made any decision to transfer until much later on in the process.
24. To respond to one of Mr M's comments. I do not consider that either DPF, or this organisation, overlooked the key points of Mrs G's complaint. DPF are bound by the Regulations of the Scheme and pensions legislation which prohibit DPF from making a CETV, because Mrs G lost her statutory right to a transfer from 18 March 2016 onwards, a time when she was only making general enquiries about the possibility of transferring her benefits to a SIPP.
25. Despite the maladministration identified, or desire to put Mrs G back into the correct position, there is regrettably, no remedy for Mrs G. Because the 12 month transfer window passed on 18 March 2016, without a valid instruction to proceed being in place, I will not make a direction which results in an unauthorised payment because that would have penal tax implications on both Mrs G and the Scheme.
26. Mr M made a number of suggested remedies, making reference to a DWP guide for financial redress on maladministration. I am not bound by that DWP guide, because legislation permits this organisation to make directions similar to the courts. I understand why Mr M suggested his remedy, but it is not appropriate in my view.

27. Based on the circumstances of this case, ordinarily I would make no direction for financial injustice, despite the maladministration, for reasons already given. In the spirit of trying to resolve matters DPF offered Mrs G compensation of around £3,000 which took into account the cash value of Mrs G's CETV, less IFA and SIPP fees, her retirement lump sum, and the estimated survivor pension and death grant. A separate award was made for £1,000 in recognition of the distress and inconvenience caused.
28. Because there is no financial remedy for Mrs G, I consider DPF's offer to be reasonable. I acknowledge she wanted full control over her pension assets, but using a SIPP to do so was not appropriate when the Scheme provided a serious ill-health commutation option. As it stands Mrs G has suffered a loss of expectation, but she is in receipt of the correct pension benefits from the Scheme, calculated in accordance with her service and resignation. Broadly speaking there is no difference in the overall financial value of the benefits she receives from the Scheme compared to the CETV value, it is just that she cannot access any future death benefits as cash now.
29. I am making no direction in this case. If Mrs G wishes to accept the compensation offer made by DPF then she must contact them to arrange payment.
30. Therefore, I do not uphold Mrs G's complaint.

Anthony Arter

Pensions Ombudsman
16 May 2017

Appendix

Sub-sections 95(1) and 95(1A) of the Pension Schemes Act 1993

(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.