

Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Norfolk County Council (the Council)

Outcome

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

Complaint summary

3. Mr N is complaining that the Council recalculated the cash equivalent transfer value (**CETV**) within the three month guarantee period and the transfer proceeded on the basis of the later CETV, which was lower than the original.

Background information, including submissions from the parties

4. Mr N was an active member of the LGPS from 1 August 1976 to 31 March 2005.
5. On 1 July 2013, Mr N requested a transfer value. He was sent a letter dated 3 July 2013 (**the July CETV**) which gave a CETV of £420,966.25, guaranteed for three months from the date of the letter (i.e. 2 October 2013). No discharge forms were attached.
6. Since January 2012, Mr N has employed an independent financial advisor (**IFA**). In August 2013, Mr N provided his IFA with a copy of the July CETV.
7. On 11 September 2013, the IFA telephoned the Council. The IFA's note of the telephone conversation says, "will send to us transfer quotation with UK discharge forms. 2 weeks". The IFA says this was requested in order to do a Transfer Value Analysis and the July CETV did not provide enough information to do this. The Council's note of the same telephone conversation says, "global qrops phoned they would like up to date tv and transfer out forms. They do not require the overseas forms".

8. The Council sent a revised CETV, with additional details relating to the GMP liability, on 12 September 2013 (**the September CETV**). It provided the discharge forms and gave the CETV as £416,912.42, guaranteed for three months from the date of the letter (i.e. 11 December 2013).
9. On 8 November 2013, the Council said they received correspondence from Mr N confirming that while he was aware that the July CETV deadline had passed, he would like an exception to be made due to personal circumstances. In the internal dispute resolution procedure (**IDRP**) response, the Council said this was rejected on the basis that, "He had received several transfer quotations over the previous 8-9 years and so was fully aware of the process and requirements." As part of the investigation of Mr N's complaint, the Council have recently submitted to this office that, "There is no discretion under the Local Government Pension Scheme Regulations to extend time limits laid down under the Pensions Act 1993."
10. The completed transfer discharge forms were returned to the Council on 6 December 2013 and the September CETV was honoured.
11. Following the IDRP, where his complaint was not upheld, Mr N complained to this office.

Adjudicator's Opinion

12. Mr 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 briefly below.
 - There is nothing within the LGPS regulations that prevent the Council from sending out a second CETV at the member's request and Mr N had not put forward any evidence to show that the Council acted outside of the regulations in providing the September CETV.
 - Based on the telephone notes provided by the IFA and the Council, the Adjudicator felt there was no ambiguity that a request for a new CETV was made and the Council were acting on that instruction.
 - It would have been the responsibility of Mr N and his IFA to have compared the two valuations and, if there was any doubt, to have questioned the Council. It was not the fault of the Council that the IFA was unable to contact Mr N in this period, nor that Mr N was unable to contact the Council at that time.
 - There was nothing within the LGPS regulations that allows the Council to exercise discretion to consider Mr N's July CETV outside of the guarantee period.
13. Mr N disagreed with the Adjudicator's Opinion and submitted, in summary:

- the IFA, when contacting the Council on 11 September 2013, did not need a new CETV, but merely a breakdown of Mr N's pension benefits in order to do a Transfer Value Analysis;
 - Mr N is unhappy that the Council referred to his previous CETV requests as being "several" and over a period of "8-9 years" and believes this to be unfounded and made without supporting evidence;
 - Mr N questions the conflict between the reason given in the IDRP response for not allowing the July CETV deadline to be extended (the reference to his previous knowledge of the CETV process) and the reason given in the submission to this office (that there is no discretion under the relevant regulations); and
 - Mr N questions the integrity of the telephone note the Council provided relating to the call with his IFA on 11 September 2013. He questions when this note was made, as he had previously requested a transcript of the telephone call and was informed that calls were not recorded. A copy of the telephone note was not made available to him prior to the investigation of his complaint by this office.
14. As Mr N did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr N 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 N for completeness.

Ombudsman's decision

15. Mr N has raised valid points in relation to the Council's IDRP responses. I agree that the IDRP responses were vague and a more in depth response should have been given to Mr N's complaint. However, this does not change the outcome of his complaint.
16. Mr N is correct that the Council gave conflicting information as to why there could not be an extension to the July CETV deadline. I note that the Adjudicator merely quoted the Council's responses to this point in the Opinion, but this was not the basis of the findings. While it may have been conflicting, the information the Council did provide to the Adjudicator is correct. The LGPS regulations¹ do not give a discretion to allow a transfer outside of the three month time frame set by the Pensions Act 1993². For this reason, the July CETV could not be honoured after 2 October 2013. I agree with the Adjudicator that Mr N was well aware of this deadline and the responsibility was his to make sure that, if he wanted to take advantage of the higher CETV, he needed to return the discharge forms within the time limits.

¹ Regulation 96 of the Local Government Pension Scheme Regulations 2013 "Rights to payment out of pension fund"

² Section 95 (1A) of the Pension Schemes Act 1993

17. As to the integrity of the telephone note from the Council dated 11 September 2013, unless there is compelling evidence to the contrary, I accept that all parties to the investigation are acting in good faith. Regardless of this, I cannot see how this changes the outcome for Mr N. The reality is that there is nothing within the relevant regulations that prevent the Council from issuing a second CETV. Again, the onus was on Mr N to make sure that, if he wanted to take advantage of the July CETV, he needed to submit the discharge forms before 2 October 2013.
18. Mr N has raised the point regarding the purpose of the contact between his IFA and the Council in September 2013. Mr N's IFA is not a party to the complaint (although I see that they are representing him in this matter), so this office has not investigated why, on receiving the September CETV, they did not question it further. What I can determine is that, the evidence submitted shows that a CETV was requested in September 2013 and the Council acted on this instruction.
19. I agree that the Council acted reasonably and in line with the relevant regulations. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
23 January 2017