

Ombudsman's Determination

Applicant	Mrs S
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Leicestershire County Council Pensions (the Council)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by Leicestershire County Council Pensions.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S' complaint concerns the Council incorrectly informing her she could transfer her pension, on which basis she chose to retire early. Mrs S says she is no longer able to return to her previous role and is having to rely on her husband to cover her financially.

Background information, including submissions from the parties

4. Mrs S was considering transferring her defined benefit scheme into a personal pension with an income drawdown. In March 2015 she received a cash equivalent transfer value (**CETV**) from the Council quoting a figure of £51,557.99 (for the accrued benefits of £50,616.65 plus deferred benefits of £941.34).
5. Later that month Mrs S' husband phoned the Council concerning the possibility of transferring the CETV. He was told it was possible but it would need 3 to 4 months' notice.
6. In May 2015 Mrs S handed in her notice at the Primary School where she worked. Her last day would be 31 August 2015.
7. Mrs S' husband called the Council in June 2015 to again check if the transfer could go ahead. He was told it could once Mrs S was no longer an active member of the Scheme.

8. In September 2015 Mrs S received a letter from the Council explaining her options on taking her pension benefits:
 - Option A was a pension of £2,248.43 per year with a tax free lump sum of £4,753.54.
 - Option B was a pension of £1,690.44 with a tax free lump sum of £11,269.42.
9. Mrs S sought clarification of her pension benefit options as she was under the impression that she could take a transfer. She was told the options set out in the letter she received in September 2015 were correct, and it was not possible to transfer her pension.
10. Mrs S wrote to the Council and complained that she had relied on the information provided to her by the Council regarding the ability to transfer her pension. Amongst other things, she said:

“My decision to retire now was based on the expectation and firm belief that I would be able to drawdown an income of £7,365 p.a. (i.e. £51,558 / 7 years) until my State Pension of £7,328 p.a. became payable.”
11. Mrs S then began the internal dispute resolution procedure (**IDRP**). Brief details of the stage 1 decision are set out below:-
 - Between March 2006 and August 2008 Mrs S was previously employed at another school. She was made redundant and commenced taking a pension of £93.84 per year.
 - Under the Pension Schemes Act 1993 (**PSA 1993**) (as amended by the Pension Schemes Act 2015), commencement of her pension triggered a ‘crystallisation’ event, which prevents her from transferring her pension to another provider.
 - On 31 March 2015 a bulletin was sent to all pension local government pension administering authorities which explained that if a crystallised event occurred, a scheme member was not entitled to transfer their pension.
 - Her husband, on Mrs S’ behalf, had been given incorrect information regarding being able to transfer her pension when he telephoned the Council in June 2015, which was after the bulletin update had been circulated. However, the Council had acted correctly in refusing a transfer given the amended statutory provisions under the PSA 1993.
12. Mrs S was offered £250 for the distress and inconvenience caused and a further £250 as there was a delay in issuing the decision. She did not agree with the outcome so requested a stage 2 IDRP decision. This was received in July 2016 and upheld the stage 1 decision.

Adjudicator's Opinion

13. Mrs 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:
- The Council had clearly given Mrs S incorrect information with regard to the ability to transfer her pension. Mrs S' husband was told on two occasions by the Council she would be able to transfer her pension. So it was reasonable that Mrs S relied on this information.
 - Mrs S is having to use her personal savings of £6,000 to cover her personal expenditure, and only has £3,000 remaining. So her husband has had to cover some of this expenditure with his own pension.
 - Mrs S' husband had already been covering her personal expenditure despite the fact she was not in receipt of any pension benefits or other income. So on the balance of probabilities, it was likely that Mrs S would have retired anyway.
 - There had been no financial loss with regard to Mrs S' pension value. She was still entitled to receive an annual pension if she wished.
 - The Ombudsman is prevented by statute from directing the Council to transfer Mrs S pension.
14. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S has provided 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 Mrs S for completeness.

Ombudsman's decision

15. It is clear that the Council incorrectly advised Mrs S that she could transfer her pension, and this amounts to maladministration. Mrs S' husband was told by the Council on two separate occasions that she could transfer her pension, so it was not unreasonable for her to believe this. Mrs S was clearly considering retirement when she requested her CETV. So the question that remains is what would have happened if the Council had given her the correct information about her ability to transfer her pension.
16. Mrs S maintains that she retired early on the basis of being able to transfer her pension. She says that, to remain financially independent, she planned to use her pension to draw down income until she was able to access her state pension. I do not doubt this was a significant factor in her decision to retire early. I also realise that Mrs S could not return to her previous role as the vacancy had been filled, and that it is difficult for her to return to a similar role.

17. However, Mrs S was still able to access her pension even though she is unable to transfer it. This would initially be a smaller income than she had planned, but would not have been exhausted after 7 years. Mrs S' has said she has been using her own savings of £6,000 to cover her personal expenditure, and since January 2017 Mrs S' husband has been covering her personal expenditure using his pension. This is without any additional income from either a pension or employment.
18. Furthermore, there was nothing to stop Mrs S from seeking alternative employment in the period when she was not receiving an income in order to remain financially independent. Mrs N says the reason why she did not return to employment was because she thought this complaint would be found in her favour. However, I do not find this justification to be reasonable, given that the outcome of her complaint was never certain.
19. Consequently, I cannot say Mrs S would have acted differently if she had been provided with the correct information concerning her ability to transfer her pension. In addition, as explained by the adjudicator, I am prevented by statute from directing the Council to allow Mrs S to transfer her pension.
20. With regard to the non-financial award for the significant distress and inconvenience Mrs S has suffered, the Council have offered to pay Mrs S £250 for the incorrect information it gave her and £250 for the delay in issuing its IDRP 1 decision; I find this to be reasonable given the circumstances.
21. Therefore, I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
29 June 2017