

Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	West Yorkshire Pension Fund (WYPF)

Outcome

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

Complaint summary

3. Mr N's complaint about WYPF is that it failed to provide him with sufficient information about his options upon retirement, and it did not give adequate notice regarding the requirement to apply for a Cash Equivalent Transfer Value (**CETV**) at least 12 months' in advance of their retirement date.
4. Mr N believes he has been disadvantaged as a result of WYPF's failure to provide this information, and it should therefore issue him with a CETV.

Background information, including submissions from the parties

5. Mr N was a contributing member of the Scheme for a number of years through his employment with Lincolnshire Home Independence Agency. His Normal Retirement Date (**NRD**) in the Scheme was 18 July 2016, at age 65.
6. On 1 April 2014 the Local Government Pension Scheme Regulations 2013 (the **2013 Regs**) came into effect, outlining the statutory basis for members to apply to transfer their benefits under The Pensions Scheme Act 1993.
7. Regulation 96(1) of the 2013 Regs states the following:

"A member may apply for a transfer under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993 and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004)."

8. There are, however, conditions which must be met to allow a transfer of benefits under the 2013 Regs. The Pensions Scheme Act 1993, Part 4ZA – Transfers and Contribution Refunds, Chapter 1 – Transfer Rights: General, outlines these conditions. The relevant condition in Mr N’s case is Chapter 1 (4) – Condition 3:

“(4) Condition 3 is that – (a) the member is no longer accruing rights to benefits in that category... and (b) in the case of benefits that are not flexible benefits, the member stopped accruing those rights at least one year before normal pension age.”
9. In Spring 2015, a newsletter was posted by WYPF to all of its members, enclosing an article entitled ‘Freedom and Choice’. This article explained the new pension freedoms applicable to the Scheme. In particular, the article detailed the rules requiring members to have at least 12 months’ remaining prior to NRD, in order to be eligible to request a CETV.
10. On 2 April 2016, Mr N contacted WYPF to request a retirement pack, as his NRD was approximately 3 months away. Mr N also requested information about his options.
11. On 5 April 2016, WYPF requested Mr N’s final salary information from his employer. WYPF contacted Mr N’s employer again on 25 April 2016 and 9 May 2016, as the information was still outstanding. The employer provided WYPF with Mr N’s final salary information on 9 May 2016.
12. On 14 May 2016, Mr N requested a CETV from WYPF. In its response, dated 18 May 2016, WYPF asked Mr N to confirm whether the CETV was being requested for general information, or if he was intending to transfer his benefits.
13. On 23 May 2016, Mr N called WYPF to again request a CETV. He also requested an estimate of his pension in the Scheme. WYPF wrote to Mr N following his call, providing a copy of the ‘Freedom and Choice’ article, enclosed with the Spring 2015 newsletter. A further letter, sent to Mr N the same day, confirmed that WYPF was awaiting new factors, required to calculate a CETV.
14. On 8 June 2016, Mr N called WYPF to chase his CETV quote. He was told a manual calculation was needed, but it was confirmed to him that certain types of retirement would not allow a transfer option. The following day, WYPF informed Mr N that it had requested his retirement details from his employer.
15. On 16 June 2016, WYPF received Mr N’s retirement notification from his employer, and a retirement pack was issued to him on 29 June 2016.
16. On 2 July 2016, WYPF wrote to Mr N, informing him that he was not entitled to a CETV, as he was within 12 months of his NRD.
17. On 5 July 2016, Mr N emailed WYPF questioning why he had not been informed sooner that he was ineligible to transfer. WYPF advised it would raise the issue with a senior manager. A full response was provided to Mr N on 9 July 2016, quoting the

2013 Regs and confirming the position. Further communications followed between the parties.

18. On 8 October 2016, Mr N raised a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). It was Mr N's position that WYPF did not do enough to inform members of the 2013 Regs and the restrictions on transfers of benefits. Mr N stated that it was unreasonable to expect members to begin retirement planning over a year in advance of NRD.
19. On 14 December 2016, Lincolnshire County Council issued the Stage 1 IDRP response, on behalf of WYPF. It confirmed that the relevant regulations had been applied in Mr N's case, namely, as Mr N was still accruing benefits after his 64th birthday, he was not eligible to transfer his pension rights.
20. On 17 January 2017, Mr N complained under Stage 2 of the IDRP. He reiterated his arguments that WYPF did not provide sufficient notification of the restrictions applying to CETV requests, thus compromising his options.
21. On 10 April 2017, Legal Services Lincolnshire issued the Stage 2 IDRP response, on behalf of WYPF. It confirmed that the 2013 Regs were introduced in April 2014, and information was made available on the Scheme website from that point. It also noted that the Spring 2015 newsletter, sent out to all members, included an article which specifically explained the requirements regarding transfers. It was concluded that WYPF could not issue a CETV as Mr N was within 12 months of his NRD and there was no discretion regarding this.
22. On 13 April 2017, Mr N responded to WYPF and the Stage 2 IDRP decision. He did not consider that the provision of information on the Scheme website and a newsletter constituted 'adequate notice', and argued that, in any event, not everyone has access to the internet, and newsletters are not guaranteed to be delivered.
23. On 2 May 2017, Mr N complained to this office. He stated that WYPF failed to provide necessary information in an effective manner, in the appropriate time, to enable sufficient retirement planning. He considers WYPF should issue him with a CETV.

Adjudicator's Opinion

24. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by WYPF. The Adjudicator's findings are summarised briefly below.
 - The Scheme was not obligated to provide direct notification of such changes to individual members. The change was communicated online, and the information was made available in the Scheme's Spring 2015 newsletter.
 - Although Mr N does not consider the provision of information in a newsletter to be adequate, as there is no guarantee of receipt, the Scheme's obligations regarding

the provision of information are to ensure the letters are sent out to the member. The Scheme cannot be held responsible for non-delivery due to the failings or errors of Royal Mail, including misdirected or lost post.

- While a failure to provide or disclose information may amount to maladministration, consideration will be given as to whether the information was easily available from other sources and whether it was reasonable for the member not to have accessed those sources. WYPF has advised that the information has been accessible on its website since the changes came into effect.
- WYPF are obliged to administer the Scheme in accordance with the Scheme Rules and other relevant legislation. It has no discretion in this regard. WYPF has correctly and applied the appropriate Scheme Rules in this case. The Pensions Ombudsman will not instruct any pension provider(s) to act against the Scheme Rules, and therefore cannot direct WYPF to provide Mr N with a CETV.

25. Mr N did not accept the Adjudicator's Opinion and 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 in his letter of 27 July 2017 for completeness.

Ombudsman's decision

26. Mr N has, in my view, produced no new evidence to support his case. Reference has been made to existing points and these are summarised below:

- Mr N has argued that, a notification on the Scheme website is only effective where all members are IT-literate, and fully conversant with the Scheme website.
- Further, Mr N states that a notification by post is impractical, as it is not always clear whether a newsletter contains pertinent information, or is simply a piece of 'junk-mail'.
- Mr N has concluded that it is not reasonable to assume that either method of communication alone is satisfactory for current retirees, and reliance on such inadequate communications falls short of providing satisfactory customer service.

27. It is correct to say that not all of those reaching retirement age will be IT-literate, and therefore information provided on the Scheme website may not have been accessible. In order to ensure all members received the relevant information regarding the introduction of the 2013 Regs, WYPF also provided this information in the form of a newsletter. I consider that WYPF acted appropriately to ensure all

members – including those who are not IT-literate – were provided with this information.

28. Mr N believes the provision of a newsletter to have been impractical, as it would be difficult to decipher relevant information, from junk-mail. I disagree; it is the responsibility of the individual member to read correspondence posted by the Scheme. WYPF's obligation to provide information to members was fulfilled when it posted the Spring 2015 newsletter, it cannot be considered liable if a member chooses to ignore or disregard postal communications.
29. In conclusion, WYPF made every effort to ensure members were made aware of the 2013 Regs, therefore Mr N was provided with adequate notice of the requirement to request a CETV a minimum of 12 months' prior to his NRD. I do not agree that WYPF should reasonably have done more to ensure members were informed of the 2013 Regs and the effect on members eligibility to transfer benefits, and I consider that WYPF has appropriately applied the Scheme Rules in this case.
30. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
8 August 2017