

## Ombudsman's Determination

Applicant	Mr Y
Scheme	UK Atomic Energy Authority Combined Pension Scheme (the <b>Scheme</b> )
Respondent	UK Atomic Energy Authority (The <b>UKAEA</b> )

## Outcome

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

## Complaint summary

3. Mr Y says UKAEA failed to inform him that he had a right to transfer out his benefits at any time before age 59. Mr Y says he did not become aware of the option to transfer until April 2015 - when it was too late. Consequently, he missed the opportunity to consider a transfer and has been financially disadvantaged.
4. Mr Y says, while he may not necessarily transfer out, he would like to retrospectively be given the option to consider a transfer.

## Background information, including submissions from the parties

5. The Scheme is an unfunded public service defined benefit (**DB**) scheme.
6. The Pension Schemes Act 1993 (as amended) restricts transfers out of unfunded public service DB schemes to schemes offering flexible benefits. The restriction did not apply to members who had already made a valid application to transfer before 6 April 2015.
7. Pension scheme members must be told of their rights and options on leaving Service. The information must be provided automatically within two months of the scheme being notified that the member has left Service.
8. Under the Pension Schemes Act 1993, a deferred member, who is at least one year from NPA, has a statutory right to take a cash equivalent transfer value (**CETV**).

9. Rule 9.03 of the Scheme rules (the Rules) states that 'an application for a CETV must be made in writing on or before the date one year before the date on which the member reaches his normal pension age, or six months after his pensionable service ends (whichever is the later) - except where a transfer is to acquire rights in an occupational pension scheme or contracted out money purchase scheme'.
10. Mr Y attained age 60 in September 2014. He had a legal right to take a CETV up to his 59 birthday (September 2013).
11. In April 1998, it was agreed that Mr Y's employment would end in May, following voluntary severance. On 28 April 1998, he was advised by the Head of Human Resources (**HR**), that he would qualify for a deferred pension under the Scheme. The letter said:

"There are certain options open to you under the Pensions Scheme and these must be considered and decisions reached before the early retirement documentation can be put in hand.... please arrange ..a suitable date and time for you to visit [HR] to discuss these matters and complete the necessary documentation...."
12. On 30 April 1998, Mr Y signed his exit form (the **Exit Form**). The form requested details of his new employer (or personal pension scheme) - if he was interested in a possible transfer of his accrued pension benefits. Mr Y did not provide any such details.
13. UKAEA says the Exit Form confirmed that he did not wish to transfer his benefits on leaving the Scheme. UKAEA says it would appear that the legislative requirement to provide him with information about his rights and options on leaving the Scheme was met.
14. Mr Y says he was told around the time of leaving the Scheme that he would not be able to 'opt out' in future, but he was not told that he could transfer at a later date. Mr Y says, if he had been correctly informed about his options, he would have remembered what they were.
15. Mr Y has provided a copy of his deferred benefit statement dated 31 March 1999. The statement does not advise his right to transfer at any time before age 59.
16. Between November 2002 and August 2012, Mr Y made enquiries about the Scheme at various times. Those enquiries did not include questions about the possibility of transferring out his benefits.
17. On 17 June 2011, in response to an enquiry about whether 'proposed changes being suggested by the government would affect' his pension, the Scheme administrators advised that it was unable to confirm the position at that time.
18. Mr Y says the pension changes, later announced in Budget 2014, prompted him to made his earlier enquiries in June 2011 about possible changes to pension legislation.

19. In the period that followed, Mr Y made further enquiries about his pension. These enquiries do not include questions about the possibility of transferring out his benefits.
20. Mr Y says despite numerous communications with the administrators prior to his 59 birthday, at no stage was he ever advised of his option to transfer. He believes he missed the opportunity to consider a transfer because of UKAEA's mistakes.
21. Budget 2014 announced fundamental changes to the way individuals can access their defined contribution pension savings.
22. In June 2014, Mr Y requested an update on his pension as he was approaching NPA.
23. On 7 July 2014, he asked the Scheme administrators whether, with the 'recent changes announced by the Government', he will have the option not to take his pension at age 60, delay taking his pension for several months, and take his entire pension as a single lump sum.
24. On 15 July 2014, the administrators replied that from April 2015, the government proposed to change the tax rules to allow individuals to access DC savings as they wished. And if the changes were implemented, they would likely come into effect from April 2015. Mr Y then asked if he would have the option to delay his retirement even if the guidelines were not yet available. The same day the administrators replied that under the current Rules, there was no option to delay payment of his benefits beyond NPA.
25. On 13 September 2014, Mr Y attained NPA under the Scheme. His pension was put into payment at that time.
26. On 17 December 2014, changes made by the Taxation of Pensions Act 2014, permitted pension savings in an defined contribution arrangement to be taken as an authorised taxed lump sum.
27. On 29 March 2015, Mr Y contacted the Scheme administrators. He said his pension was in payment; he asked whether, following Budget 2015, he would be able to 'cash' in his pension for a 'DC value'. He asked the administrators to clarify whether members of DB schemes who have not taken their pension, could access their pension pot [flexibly]. He asked whether he had a DB pension in the Scheme.
28. On 7 April 2015, Mr Y asked whether he could have transferred his pension to a DC scheme before his pension came into payment.
29. Following further exchanges of communication, he was advised that he could have transferred out prior to attaining age 59 and that he was unable to transfer his pension to a DC scheme retrospectively.
30. Mr Y's further comments are set out below.
  - He was not made aware of his right to transfer nor was he reminded of that right as he was approaching his 59 birthday.

- He received very little communication from the administrators. Most of the details he received were in response to his enquiries.
- He discovered after accessing the Scheme rules that a deferred member can transfer out at any time up to one year before NPA. He had not previously been aware of this.
- The Scheme had a responsibility to inform him of his options in advance of his 59 birthday. He missed out on the opportunity to make a vital financial decision, about whether (or not) to transfer, which may affect the rest of his life, because of UKAEA's lack of openness and transparency about the transfer rule.
- In the period leading up to his 59 birthday, he could not access any information on the Scheme's website. Consequently, he was unable to access details about his pension options.

31. Further comments from UKAEA are set out below.

- The Scheme's website includes a section on transfers which informs members of that option and the Scheme rules. The option to transfer is only available up to one year before NPA.
- In the period leading up to his retirement, Mr Y made a number of requests for information; the correspondence indicates that he was only interested in benefits due at retirement. If he had been considering transferring, the administrators would have provided the relevant details.
- While UKAEA accepts that the 'view my pension' section on the website was not available to Mr Y from around 2012, he was given quotes at various times equivalent to those that would otherwise have been available from the 'view my pension' section. Moreover, the general information sections of the website, including the part which gave information about rights to transfer, was functioning.
- Under pension legislation in force at the time, the Scheme only had a statutory duty to provide deferred members with details of their right to transfer and a statement of entitlement on request. As no such request was received from Mr Y, before his retirement, the Scheme administrators were not required to specifically offer him the option to transfer.
- There was no legal duty on the Scheme to inform him of any subsequent changes in pension legislation at any time.

## **Adjudicator's Opinion**

32. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required. The Adjudicator's findings are summarised briefly below:

- While pension scheme members who have left pensionable service must be told their rights and options on leaving service, there was no legal duty on the Scheme to inform (or remind) Mr Y of his rights and options at any other time.
  - The Adjudicator was unable conclude that, had Mr Y been aware of his right to transfer before his 59 birthday, he would have applied for a CETV - before 13 September 2013, and transferred out.
  - It is clear that the enquiries he made in July 2014, were in response to the 'Pension Freedoms' first announced by the government in Budget 2014.
  - The Act which made changes to allow individuals with DC pension savings the right to take an 'authorised taxed lump sum' - with effect from 6 April 2015, was not made until December 2014.
  - Under the Rules there was no option to delay payment of his benefits beyond his NPA.
  - While he may have lost the opportunity to consider a transfer and to take his benefits in the form he may otherwise have liked, he has suffered no actual financial loss.
33. Mr Y did not accept the Adjudicator's findings and the complaint was passed to me to consider. Mr Y has provided his further comments but these 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 Y for completeness.

### **Ombudsman's decision**

34. Mr Y says he would have seriously considered transferring out before 2013, due to various changes in his personal circumstances: he was made redundant, and he had a large mortgage that needed to be paid off.
35. Mr Y says as a result of the missed opportunity to consider a transfer, he lost money because he has not been able to pay off his mortgage. And, as a consequence, he is having to work past his NPA.
36. Mr Y says he would like the Scheme to provide him with the transfer out information that he could have obtained before September 2013, so that he can consider the options that would have been available to him at that time.
37. Mr Y says he still does not know how much would have been available to transfer before he attained age 59. Consequently, he is unable to say what he would have done had he been aware of his right to transfer.
38. I am satisfied that Mr Y does not have an entitlement to take a CETV under either pension legislation or the Scheme rules.

39. In July 2014, he enquired about taking his pension as a single lump sum. There is no evidence to support that he was interested in the possibility of a transfer prior to this.
40. Central to Mr Y's complaint is that he lost the opportunity to consider a transfer to a DC arrangement in order to access his benefits flexibly. Whether Mr Y would likely have transferred out, before attaining age 59, in anticipation of the pension freedoms announced in Budget 2014, is purely speculative.
41. Turning now to the alleged financial loss. Mr Y would be contractually bound to pay off any mortgage debt regardless of the maladministration he alleges. So I am not persuaded to consider this as evidence of financial loss.
42. Pension legislation now prevents transfers from unfunded public service defined benefit schemes to schemes that allow members to access their pension savings flexibly.
43. The outcome he is seeking would require that he (retrospectively) be given the option to repay his retirement benefits so that he can consider a retrospective transfer.
44. Quite apart from the fact that a transfer of his benefits is prohibited under pension law, Mr Y has suffered no actual financial loss - he is receiving a pension from the Scheme, albeit in a form he may (or may not) like. I find no good reason to direct that the Scheme unwind his retirement on the basis that he ought to be allowed the option to consider a transfer.
45. Therefore, I do not uphold Mr Y's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
16 May 2017