

## Ombudsman's Determination

Applicant	Mr I
Scheme	Concentric Plc Directors Pension and Life Assurance Scheme ( <b>the Scheme</b> )
Respondent	Trustees of Concentric plc and Subsidiary Companies Directors' Pension and Life Assurance Scheme ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

3. Mr I has complained about what he considers to be preferential treatment given to other members of the Scheme and senior managers of Concentric PLC (**the Company**).
4. He says his benefits were significantly reduced because the Scheme was underfunded, whereas other senior managers were provided with a full and enhanced pension to the detriment of other members including him.

## Background information, including submissions from the parties

5. On 1 January 1988, Mr I joined the Scheme, which provided defined benefits.
6. On 31 January 1998, Mr I left the Company's employment and became a deferred member of the Scheme.
7. In June 2008, at age 61, Mr I contacted the Trustee to request consideration for early payment of benefits due to being made redundant.
8. On 29 July 2008, the Trustee provided Mr I with a retirement pack for both his main Scheme benefits and his Additional Voluntary Contributions. The retirement pack confirmed that his main Scheme benefits provided a cash equivalent transfer value (**CETV**) of £157,186, reduced from £258,234 due to the Scheme being underfunded. A quote was provided for an annuity based on the CETV.

9. This correspondence informed Mr I that if he retired at the Scheme's normal retirement age, at age 65, on 31 July 2011, the benefits would be paid unreduced.
10. In subsequent correspondence Mr I confirmed he understood that if he waited until his normal retirement date he would receive an unreduced pension.
11. On 31 October 2008, Mr I accepted benefits from the Scheme. The Scheme used the CETV to purchase an annuity on his behalf and he received a pension commencement lump sum.
12. In mid-2016, Mr I contacted the Trustee. He queried whether he had any right to transfer; what level of widow's pension benefits would be payable on his death; and whether other members had received special treatment in relation to their pension benefits. He also requested confirmation of the process to be nominated as a Trustee.
13. The Trustee responded confirming that as Mr I had already taken benefits, there was no scope for him to transfer elsewhere. It also confirmed the widow's pension and said it would investigate the alleged preferential treatment given to other members, if Mr I provided more information about this.
14. Mr I sought nomination as a trustee from another member, but the nomination was received by the Scheme too late to be considered.
15. In February 2017, in the course of further correspondence with the Trustee, Mr I passed on an account made to him by another member, that sums had been transferred away from the Scheme in order to fund certain members' unreduced benefits. The Trustee responded, clarifying that it could not comment on specific members' entitlement due to confidentiality, but that it was unaware of any payments made outside of the Scheme Rules.
16. On 17 February 2017, Mr I raised the matter as a formal complaint under the Scheme's Internal Dispute Resolution Procedure (IDRP).
17. On 20 July 2017, the Trustee responded to the complaint under stage two of the IDRP. It confirmed that it had reviewed the historical member files which showed that all benefits were paid in accordance with the Scheme Rules, specifically, Rules 28 and 29; and, there had been no special treatment given to other members.
18. Dissatisfied with this response, Mr I referred the complaint to this Office.

### **Adjudicator's Opinion**

19. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-

- Mr I had provided no evidence that other members had received benefits other than those they were entitled to, and Mr I had confirmed that he did not think their benefits were incorrect, merely that they had not been reduced.
  - Mr I's concerns are therefore about the reduction in his benefits. The actuarial calculations used to establish his CETV were no longer available, due to the passage of time.
  - However, Mr I was clearly aware of the reduction, and the reason behind it, when he chose to take his benefits. If Mr I was unhappy with the reduction, he ought to have complained at the time. This Office could only investigate matters brought within three years of the event complained of, or if later, within three years of the date the individual became aware of the issue.
  - The Adjudicator considered that Mr I may have had a reason to complain at the time he was informed of the reduction. The Adjudicator did not think Mr I's recent conversations with his former colleagues gave him reason to complain because they took benefits at materially different dates and subject to different rules. It was not reasonable to say that such comparisons could give rise to a new complaint.
  - Mr I had alleged that the Scheme had been "plundered" by a former executive of the Scheme, but there was no evidence to support that accusation.
  - Mr I had argued that the actuarial calculations should have been retained, in order that their accuracy could be checked. The Adjudicator explained that under The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (Part III, Chapter III, Regulations 12 and 14), the Trustee was not required to retain such calculations for longer than six years. Therefore, the absence of those documents did not constitute a breach of any duty.
20. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr I for completeness.

### **Ombudsman's decision**

21. Mr I is concerned that his request for benefits was not treated fairly or in line with other members'. He has received accounts from other members that they were provided with enhanced transfer values, or large lump sums, when they chose to transfer away or take benefits.
22. I have considered Mr I's claim; however, I cannot see any legitimate basis on which I can investigate and scrutinise the basis of benefits that were paid to other individuals. Mr I's claim is based on anecdotes from his former colleagues that they transferred away from the Scheme and received significant lump sums. However, there is no reason to think those benefits were not in accordance with their entitlement under the

Scheme, and Mr I has said that he agrees the benefits paid to them were correct. Aside from Mr I's interpretation that there was preferential treatment in favour of other members, he has provided no further evidence that he himself has been treated incorrectly or unfairly.

23. Rather, Mr I's concerns arise from his disappointment at the benefits in payment to him, and the lack of any option for him to do something differently with them now.
24. Mr I took his deferred benefits from the Scheme in 2008, at age 61. Under the Scheme Rules, the normal pension age is 65, and in accordance with Rule 14.3, Mr I was entitled to "an immediate Scheme Pension of an appropriately reduced amount as the Actuary certifies to be reasonable."
25. Mr I's benefits were significantly reduced because the Scheme was underfunded at the time he elected to take his pension. The Trustees have been unable to provide evidence of the calculation of Mr I's benefits, however there is no reason to think that the benefits paid to him were incorrect, and there is no requirement for those calculations to be kept beyond six years. I appreciate Mr I would like those calculations to be checked, but in these circumstances, I cannot not make a finding of maladministration.
26. In any event, Mr I was fully aware of the reduction at the time he took his benefits in 2008, and the complaint was not brought to this Office until March 2017. Because of the length of time between the event complained of, the reduction of Mr I's benefits, and the point at which the complaint was brought to this Office, I find that the complaint has been brought too late for me to consider. Under Regulation 5 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (see the attached Appendix), I am prevented from considering complaints brought more than three years after the event complained of, or if later, three years from the point at which the individual became aware he had reason to complain. Mr I's recent awareness of what other members of the Scheme might have received is not sufficient to extend the time limit because their benefits are not comparable. The starting point for the time limit is therefore October 2008, and I consider the time limit expired in October 2011.
27. Therefore, the complaint has been brought too late for this Office to determine and is outside my jurisdiction.

**Anthony Arter**

Pensions Ombudsman  
26 September 2018

## **Appendix**

### **The Personal and Occupational Pension Schemes (Pension Ombudsman) Regulations 1996**

#### **Time limit for making complaints and referring disputes**

**5.** (1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable.