

Ombudsman's Determination

Applicant	Mr E
Scheme	Police Pension Scheme 1987 (the Scheme)
Respondent	Sussex Police

Outcome

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

Complaint summary

3. Mr E's complaint against Sussex Police is that his request to transfer his benefits out of the Scheme and into a Self-Invested Personal Pension (**SIPP**) was declined as being out of time.

Background information, including submissions from the parties

4. Mr E was a member of the Scheme from 2002.
5. At 5.33pm on Tuesday 31 March 2015, Mr E sent an email to Capita, the Scheme administrators, asking for a Cash Equivalent Transfer Value (**CETV**), to transfer his benefits out of the Scheme.
6. Capita acknowledged his request on Wednesday 1 April 2015.
7. From 6 April 2015, changes to the Pension Schemes Act 1993 (as amended), came into force, which restricted transfers out of unfunded public service defined benefit schemes to schemes offering flexible benefits. The restriction did not apply to members who had already made a valid application to transfer their benefits before 6 April 2015. This restriction applied to the Scheme and meant that Mr E could no longer transfer his benefits to a SIPP.
8. On 14 April 2015, Capita informed Mr E that transfers to flexible benefit schemes such as a SIPP were prohibited. Mr E said that his request was made before the deadline of 6 April 2015 and he wished to go ahead with a transfer of his benefits to a SIPP.

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9. On 28 April 2015, Capita told Mr E that his request for a CETV was sent after working hours on 31 March 2015, and the request did not reach the appropriate team until midday on 1 April 2015. It pointed out that Friday 3 April 2015 was a bank holiday, and the turnaround time for a CETV request was 7-10 working days. It explained that it was unrealistic to expect the CETV to be provided within two working days and that there would not have been sufficient time to process the transfer request before the deadline of 6 April 2015. Furthermore, Mr E was still an active member of the Scheme at the time so he would have needed to have opted out of the Scheme prior to requesting a CETV. It added that he and the proposed SIPP provider would also have been required to return the completed discharge forms by 5 April 2015.
10. Mr E remained unhappy and complained to Sussex Police. Although not part of his original complaint, he also asked Sussex Police to refund the contributions he had made into the Police Pension Scheme 2015 (the **2015 Scheme**) for the period 6-24 September 2015.
11. Sussex Police did not uphold Mr E's complaint. It also says that, as Mr E's combined membership in the Scheme and the 2015 Scheme exceeded two years, he was not entitled to a refund.

Adjudicator's Opinion

12. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Sussex Police. The Adjudicator's findings are summarised below:-
 - As Mr E's request for a CETV was made after working hours on 31 March 2015, it was not actually received until Wednesday 1 April 2015. This left only two working days for Mr E to opt out of the Scheme; Sussex Police to produce and send the CETV to Mr E; Mr E to get advice and decide whether he wanted to proceed; and for both Mr E and the new SIPP provider to complete and return the discharge forms before Monday 6 April 2015.
 - As it would usually take Sussex Police 7-10 days alone to produce a CETV, it is very unlikely that Mr E could have completed the entire transfer application process before 6 April 2015.
 - Mr E's email request on 31 March 2015, was simply an application for a CETV and not a transfer application. As he did not submit a transfer application to a SIPP before the deadline on 6 April 2015, he was prohibited from doing so after that date.
 - Mr E had completed more than two years' service in the Scheme, and his service in the 2015 Scheme is included as a part of his reckonable service. Accordingly, under the Police Pension Regulations 2015, he is not entitled to a refund of his contributions in the 2015 Scheme.

13. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E and Sussex Police provided their further comments which do not materially change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E and Sussex Police for completeness.

Ombudsman's decision

14. Mr E says that Sussex Police are required to execute the wishes of the Scheme members, and the transfer was permitted when he submitted his request, on 31 March 2015, to transfer out of the Scheme. In his view, Sussex Police has not acted in good faith and has used the administrative processes to prevent his transfer. He says that, when Sussex Police received his CETV request, it knew of his intention to transfer out of the Scheme and could have begun the process for doing so right away. Sussex Police failed to advise him of the impending changes. Furthermore, he gave notice on 4 September 2015, to stop the payment of contributions into the 2015 Scheme, with effect from 6 September 2015. However, a final contribution was taken on 20 September 2015, before his last day of service on 24 September 2015. He is pleased that Sussex Police has agreed to refund his final contribution, but it has refused to pay interest on it or compensate him for the error. Mr E says he is generally unhappy with the administration of the Scheme.
15. I agree that a transfer to an unfunded scheme, such as a SIPP, was permitted on 31 March 2015, when Mr E requested for a CETV. However, there is a difference between requesting a CETV and applying for a transfer. Mr E's request was for a CETV. Such requests may result in an application to transfer but this is not always the case. Therefore, a request for a CETV cannot be treated as a transfer application. Also, Mr E was still a member of the Scheme, so he was not eligible to take a CETV until such time as he opted out of the Scheme. Admittedly, Capita should have pointed this out to him when it acknowledged his request on 1 April 2015, but this would not have made any difference due to the impossible deadlines.
16. Capita received Mr E's CETV request on 1 April 2015 and, even if he had already opted out of the Scheme at the time, it would have taken about 7-10 days to provide the CETV. It is only at that stage that Mr E would have been in a position to complete the necessary discharge forms and to request a transfer, this is after the legislative deadline of 6 April 2015.
17. I appreciate that Mr E is unhappy with the administration of the Scheme, but it would not have been possible to complete the necessary administrative procedures to start the transfer by Thursday 2 April 2015, the next working day after receipt of his email. This is because Friday 3 April and Monday 6 April 2015 were bank holidays. Effectively, Mr E would have first needed to opt out of the Scheme by 2 April 2015, to enable Capita to calculate his deferred benefits and then produce the CETV. Even if it was possible to produce the CETV the same day, 2 April 2015, Mr E, and his chosen SIPP provider, would also have needed to complete the discharge forms and

return these to Capita on the same day. These are impossible deadlines and it is not reasonable to expect any pensions administrator to meet such tight timescales.

18. Mr E considers that some of the administration relating to a transfer request could have been completed beforehand, or at the same time as producing the CETV. I am not persuaded that this was the case. It would not have been possible for him or his chosen provider to complete the relevant transfer forms before he had received a CETV. In any event, Mr E was still an active member of the Scheme at the time, which meant that Capita was unable to provide a CETV. Moreover, Capita could not assume that Mr E would require a transfer and commence the transfer process without any instructions from him. If Mr E was thinking of transferring his pension, then it was for him to seek information beforehand about the requirements and timescale. There was no legal obligation on Sussex Police to provide Mr E with notice of the impending legislative changes.
19. With regard to the refund of his contributions of £322.51 in the 2015 Scheme, Mr E gave notice on 4 September 2015, to stop contributions which would have been effective from 6 September 2015, two days later. Sussex Police say that the deadline for any changes to payroll is the 3rd of the month. This means that Mr E missed the deadline and Sussex Police were unable to implement the change before the next payroll date on the 20 September 2015.
20. I acknowledge that Mr E is unhappy that this is the second occasion on which he considers that he has given instructions that were not carried out. However, payroll deadlines such as this are commonplace and allow employers to manage changes, while still allowing the usual payroll processes to take place. Mr E's request was received after the deadline for changes to payroll. I find that it does not amount to maladministration that his pension contribution for September 2015, was still taken from his salary. Similarly, there was no obligation on Sussex Police to refund the contribution once it had been correctly deducted. While I note that Sussex Police has agreed to refund the contribution, I do not direct that it makes a payment of interest for the reasons I have given.
21. In conclusion, I find no valid grounds on which to hold that Sussex Police should have accepted Mr E's request for a CETV as a valid application to transfer his benefits before 6 April 2015.
22. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
8 August 2018