

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme (the <b>Scheme</b> )
Respondent	Rhondda Cynon Taf County Borough Council (the <b>Council</b> )

## Outcome

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

## Complaint summary

3. Mrs N's complaint against the Council is that she was misled about the cash equivalent transfer value (**CETV**) amount of her benefits. As a result, the eventual amount paid out to the receiving scheme, in December 2016, was lower than she expected. Mrs N would like the Council to pay the shortfall.

## Background information, including submissions from the parties

4. On 17 March 2015, the Council sent Mrs N an estimated CETV which quoted £229,302. As Mrs N was still an active member, the cover letter for the CETV explained that she would need to opt of the Scheme if she wanted to transfer, and that the CETV would then be recalculated, resulting in a higher or lower amount being payable. The letter also said the CETV did not include the Guaranteed Minimum Pension (**GMP**) element, so the amount quoted would decrease once the GMP calculation is carried out.
5. Mrs N opted out of the Scheme in July 2016, and instructed her independent financial advisor (**IFA**) to arrange her transfer out of the Scheme.
6. The Council sent Mrs N a guaranteed CETV on 16 August 2016. The amount stated was £238,180. The cover letter said:

"I have assumed that the above named is married so in any event, the transfer value amount may change if on receipt of the enclosed option form the marital status is different."

7. Mrs N says following receipt of this CETV, her IFA called the Council on 22 August 2016, to point out the incorrect marital status and request an amended calculation. Mrs N says the Council informed her IFA that her marital status would not affect the size of the transfer, and that this information was subsequently confirmed by the Council during another telephone call on 23 August 2016.
8. On 6 December 2016, following receipt of the transfer out documentation, the Council recalculated Mrs N's benefits and paid the CETV of £235,860 to the receiving scheme.
9. On 20 December 2016, Mrs N's IFA queried why the transfer payment was lower than the guaranteed CETV amount provided in August 2016. The Council confirmed that the difference between the two amounts was due to Mrs N's marital status. It said the estimated figure was calculated on the assumption that Mrs N was married. Once it had received the correct information that she was in fact divorced, it updated its systems and "the widow's benefits were then calculated differently which in turn reduces the amount of the transfer payment".
10. An exchange of correspondence followed between Mrs N's IFA and the Council. Mrs N's IFA complained that he had noted the incorrect marital status and received explicit confirmation from the Council that, although she was divorced, there would be no change to the transfer value amount. The IFA said Mrs N had made an important financial decision based on erroneous information, and asked the Council to pay the difference to the receiving scheme.
11. In its responses to the IFA, the Council explained that, as the Scheme provides an automatic survivors' pension, when calculating a CETV, the value of this benefit is included. This is in accordance with guidance issued by the Government Actuary's Department. Further, the cover letter enclosing the CETV informed Mrs N of the marital status used in its calculation, and that the transfer value amount may change if the marital status is different. The Council said it did not have any records of the calls referred to by Mrs N's IFA, but it apologised that she may have been misled.
12. Mrs N subsequently complained through the Scheme's internal dispute resolution procedure, on the basis that she had been misled regarding the transfer value she would receive. The stage one decision was issued on 4 September 2017 and the stage two decision was issued on 29 December 2017. Mrs N's complaint was not upheld. The stage two decision maker concluded that the transfer value Mrs N received was based on her marital status and was legally correct, and that the letter accompanying the CETV clearly informed Mrs N that the transfer may be a different amount. Consequently, the decision maker did not consider that compensation was warranted.

## Adjudicator's Opinion

13. Mrs N'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 below:-
- In the absence of records, it was not possible to say with certainty that Mrs N's IFA called the Council on the two occasions referenced, or that he was misinformed during those conversations. On balance, as the IFA has the specific names of the staff members he spoke with, which has not been disputed by the Council, it is more likely than not that those conversations took place. However, this view did not lead the Adjudicator to the conclusion that compensation was warranted.
  - Mrs N had clearly been considering her options in early 2015, prior to opting out of the Scheme and requesting a transfer out of her benefits in July 2016. In her application form to this office, she also said she would have "transferred anyway" had she initially received the lower figure in August 2016. Consequently, it was the Adjudicator's view that the misinformation Mrs N may have received was not the basis for her decision to transfer out of the Scheme.
  - The Council's letter of 16 August 2016, enclosing the CETV, explicitly said that the CETV amount would change if it received confirmation that the assumed marital status used for calculating the CETV was different. In recalculating the CETV, based on Mrs N being divorced, the Council is ensuring that it administers the Scheme in accordance with the relevant regulations governing the Scheme.
  - In any event, it is an established legal principle that the provision of incorrect information about pension benefits does not, in itself, create a legal entitlement for the recipient to receive those higher (incorrect) benefits. Accordingly, Mrs N has no entitlement to the higher benefits quoted in the CETV calculated on the basis of her being married. Her benefits in the Scheme can only be calculated using the correct marital status, and the Council cannot increase her benefits to pay her the higher amount in the August 2016 CETV.
  - It cannot be said that Mrs N has suffered an actual financial loss of £2,320 because she was never actually entitled to the higher (incorrect) amount in the August 2016 CETV. The Adjudicator accepted that it would have been disappointing for Mrs N to discover that she was entitled to a lower amount, but did not consider that an award for compensation would be made.
14. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her 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 Mrs N for completeness.

## Ombudsman's decision

15. Mrs N asserts that the legal principle should be reviewed on this occasion, otherwise staff at organisations like the Council “can quote what they wish with impunity”. She believes that the misinformation was an institutional failing and not a single error, as her IFA had spoken to two different people, including a senior member of staff.
16. Mrs N asserts that the whole department were either under the misapprehension that marital status does not affect a transfer value, or staff intentionally misinformed her IFA in order to avoid recalculating it. Due to this, the Adjudicator's Opinion “is tantamount to aiding and abetting an institutional shortcoming”. Mrs N does not accept the decision as she believes it is based on flawed principles of “legal responsibility” which has been used to “override a fundamental obligation of a Pension Fund to be at all times concise and accurate with its members' affairs”.
17. Lastly, Mrs N does not consider it to be relevant that she would have still transferred out of the Scheme on the lower amount, if she had prior knowledge of it. She believes that it is a failing of the Council that she was not informed that the reduced amount had been transferred.
18. Before determining what redress is appropriate in a particular case, there must first be a finding of maladministration.
19. I have noted the Council's position in relation to the telephone call records. Its custom is to record details of telephone calls on member records. The Council had records of calls received from Mrs N's IFA around the period concerned, on 25 and 31 August 2016. The Council also has records of other calls from Mrs N and her IFA between September and December 2016, when the transfer concluded. However, there are no call records for 22 and 23 August 2016, when Mrs N asserts the misinformation occurred. It would seem odd that some information would be recorded, while others are seemingly omitted. On the balance of probability, I find that if the Council had received queries on 22 and 23 August 2016, about the impact of Mrs N's marital status on her transfer value, it would have been recorded.
20. Further, the Council's letter of 16 August 2016, contained a clear notice about the calculation basis of the transfer value, and that this would change if the marital status was different. This rebuts Mrs N's assertions that the department was under the misapprehension that there would be no change to the transfer value amount.
21. Therefore, I am not satisfied that the Council misinformed Mrs N, via her IFA.
22. Even if the view is taken that Mrs N was misinformed, I agree with the Adjudicator that she is only entitled to receive the benefits provided for under the regulations of the Scheme, that is, those based on correct information accurately reflecting the Scheme regulations.
23. In relation to Mrs N's final point, I accept that it would have been helpful to her if the Council had confirmed that it had recalculated her benefits and would be paying a

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lower amount to the receiving scheme. However, as Mrs N ought to have been aware that the transfer value amount may change, I do not consider any injustice was caused by this and so do not consider an award to be warranted.

24. I do not uphold Mrs N's complaint.

**Anthony Arter**

Pensions Ombudsman  
8 August 2018