

Ombudsman's Determination

Applicant	Ms E
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Liberata UK Limited (Liberata), the London Borough of Bromley (the Council)

Outcome

1. Ms E's complaint is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, the Council should compensate her for the non-financial loss she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms E says that she was not previously made aware of any restrictions to transfer out after her 59th birthday. As a result, she was unable to make informed financial decisions about her pension.
4. Ms E says the Council and Liberata, the administrators of the Scheme, failed to provide information about her pension, and gave incorrect information - she was quoted a cash equivalent transfer value (**CETV**) in January 2016. She was then advised that she no longer had a right to take a CETV.

Background information, including submissions from the parties

5. Regulations 96(1) of The Local Government Pension Scheme Regulations says:
“.... A member may apply for a transfer under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993 ...”
6. Under the Pension Schemes Act 1993, a deferred member, who is at least one year from normal pension age (**NPA**), has a statutory right to take a CETV.
7. Ms E left the Council's employ in July 1989. She has a deferred entitlement in the Scheme. Ms E attained NPA in January 2017.

8. Pension scheme members must be told of their rights and options on leaving pensionable service. The information must be provided automatically within two months of the scheme being notified that the member has left service.
9. The Council accepts that the notes issued when Ms E left the Scheme, should have stated that a transfer could not take place once she was within a year of her NPA.
10. The Council says after she left the Scheme, Ms E was provided with a CETV in November 2013, in response to a request from her adviser. The Council says Ms E did not accept the CETV. Consequently, her benefits remained preserved in the Scheme.
11. On 26 January 2016, after her 59th birthday, Ms E was quoted a CETV in response to her request for a transfer value. A form was enclosed for her to complete to indicate whether or not she wanted to proceed with the transfer.
12. Ms E says she received the CETV, but she decided not to proceed with the transfer. Ms E says there was no indication on the transfer forms that any transfer restrictions applied. Ms E says, given the restriction on transfers within 12 months of NPA, there should have been systems in place to prevent CETVs being issued in such cases. Ms E says she has found no information on the Scheme's website about transfer restrictions.
13. The Council says Ms E was provided with a new CETV in error. The Council accepts that after she requested a CETV in January 2016, a response should have been sent making it clear that a transfer was no longer an option available to her, as she was within a year of her NPA. The Council says even after the CETV was issued in January 2016, Ms E took the decision not to transfer.
14. In October 2016, Ms E was diagnosed with Motor Neurone disease. Ms E says her illness expedited the need to transfer out her Scheme benefits, so that she could access the funds flexibly (via income drawdown) to help fund her significant future care needs.
15. During 2015/16, Ms E says she enquired about her benefits and the possibility of transferring out in advance of her NPA. At that point she was told that a transfer was not possible due to restrictions in the regulations governing the Scheme. Ms E says this information was not disclosed to her in any previous documentation, correspondence or transfer forms.
16. Ms E says to be advised that a transfer within the year of her NPA was not possible - after receiving a CETV in January 2016, is totally unacceptable. Ms E says the fact that she did not accept a previous CETV is irrelevant; she was misinformed about her options, and provided with a CETV when she was not entitled to it.
17. Ms E says her life expectancy is now very short. The inability to take a transfer is causing her financial hardship as she does not have the money to fund her care

needs. Ms E says the benefits of taking income drawdown would vastly outweigh the ill-health benefits available under the Scheme.

18. Ms E says even without her illness, due to the lack of information provided, she was never in a position to make informed financial decisions about her pension.
19. Ms E has provided a letter from a Motor Neurone Disease clinic. The letter says that she has progressive weakness in her arms, with some progressive weakness in her left leg. The letter notes that she has difficulties accessing her pension to help fund a new extension for her cottage, and that renovation to the main cottage will not easily allow for the adaptations required to provide her long-term care.
20. Ms E says while she understands that the option to transfer is governed by the Scheme regulations and pension legislation, given her personal circumstances, special consideration should be given to her request to transfer.
21. Ms E says she is not seeking to benefit from the mistakes made. Rather, she wants to be put back in the position, she would otherwise have been in in 2013, had she been made aware of the restriction to transfer. Ms E says she was never told about any new legislation imposing further restrictions on the ability to transfer out from the Scheme.
22. Ms E considers payment of a full CETV of her benefits would be reasonable compensation.
23. The Council says after Ms E's benefit statement was issued in September 2007, the Council was notified that she was no longer at the same address so it ceased to send any further correspondence. The Council accepts that although it was notified of her new address in late October 2013, annual statements were not issued to her again until July 2016, after she contacted Liberata.
24. While the Council acknowledges that mistakes were made in not informing Ms E that she could not transfer after her 59th birthday, and that she was not made aware of the position after she requested a new CETV in January 2016, the Council says she had sufficient opportunity to transfer before her 59th birthday.
25. The Council says the administering authorities of the Scheme have no discretion in such cases and are unable to permit Ms E a transfer of her benefits.
26. The Council has agreed to offer Ms E £500 in compensation for distress and inconvenience.

Adjudicator's Opinion

27. Ms E's complaint was considered by one of our Adjudicators who concluded that further action was required. The Adjudicator's findings are summarised briefly below:

- There is no strong evidence to support that Ms E was interested in actually taking a transfer of benefits at any time prior to being diagnosed with Motor Neurone disease in October 2016.
 - Ms E had access to a financial adviser and her adviser was provided with a CETV in November 2013. She was issued with a further CETV (in error) in January 2016. On both occasions she did not request to transfer.
 - The alleged missed opportunity to transfer is not evidence of actual financial loss.
 - The Council's offer of compensation of £500 for non-financial loss would put right any injustice she has suffered.
28. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S, Ms E's Representative, has provided further comments on behalf of Ms E 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 S for completeness.

Ombudsman's decision

29. Mr S says central to Ms E's complaint is that she was never advised at any time that there would be any restrictions on transfers after age 59. Her leaver statement provided no explanation of her rights and options.
30. Mr S says as a consequence of mistakes and negligence on the part of the Council and Liberata, Ms E made key financial decisions on the reasonable understanding that a transfer was possible at any time before her NPA. She is now in a position of financial loss unable to carry out her intended plans.
31. Mr S says Ms E's life expectancy is very short. Based on the transfer value quoted in January 2016, she would be significantly better off by transferring out and taking income drawdown.
32. Mr S says Ms E is not seeking compensation. But to be put back in the position, she would otherwise have been in, had she been correctly informed in 1989 or in 2013 about her options on leaving the Scheme. The fact that she did not apply to take a CETV in the past is irrelevant. At the time she was totally unaware about any future transfer restrictions.
33. Mr S says is it also immaterial that the regulations do not allow discretion to be exercised in such cases. This is a convenient excuse for those responsible for the mistakes made. Mr S says allowing the Council and Liberata to simply offer an apology with a 'token' offer of compensation, is sending the wrong message – even endorsing wrongdoing. Mr S says Ms E wants those responsible to be held accountable and made to pay her the transfer value that she is entitled to.

34. My starting point is to consider whether Ms E is entitled to take a CETV under pension legislation. I am satisfied that she no longer has a right to transfer, and that she did not have a right to transfer at the date when she was advised of her medical condition.
35. It is evident that maladministration has occurred in this case. Ms E was not correctly advised of her options on leaving the Scheme, and was quoted a CETV in 2016, when she no longer had a right to transfer out. I accept that she made her financial plans in the expectation that she could transfer out in the future.
36. I have considered whether she has made out a case which enables me to provide a remedy which the Scheme rules do not permit. I understand her argument to be that the lack of information about the deadline prevented her from making informed choices prior to losing her right to transfer, which lead to a financial loss. To uphold the complaint and provide a remedy on that basis, I would have to be persuaded that if she had known about the age 59 deadline Ms E would probably have transferred out before that date.
37. I am extremely sorry for the situation in which Ms E now finds herself, but I can find no evidence to support the assertion that, had Ms E previously been made aware that she could not transfer out after age 59, she would probably have exercised that right at any time before October 2016.
38. Consequently, Ms E is only entitled to the options permitted under the regulations governing the Scheme. Those regulations do not permit her the option to now take a CETV. [.]
39. But she should be compensated to the extent that her disappointed expectation has caused her significant non-financial injustice. I appreciate that an award of this nature does not impose a sanction for the maladministration identified, but as the Adjudicator explained, I do not have powers to impose penalties or sanctions.

Directions

40. To put matters right, the Council shall, within 21 working days of the date of this Determination, pay £500 to Ms E for the significant distress and inconvenience she has suffered.

Karen Johnston

Deputy Pensions Ombudsman
18 August 2017