

Ombudsman's Determination

Applicant	Mr N
Scheme	British Transport Police Force Superannuation Fund (BTPFSF)
Respondent	RPMI Limited (RPMI)

Outcome

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

Complaint summary

3. Mr N complains that RPMI improperly transferred the pension benefits available to him from the BTPFSF into the West Midlands Pension Fund (**WMPF**) in April 1993 because it had failed to supply him with details of the transfer value (**TV**) which he had requested before proceeding.
4. He contends that, if the transfer had not taken place, he would be entitled to retirement benefits from the BTPFSF in addition to those already payable from the WMPF on the grounds of ill health early retirement (**IHER**) since 30 March 1996.

Background information, including submissions from the parties

5. Mr N joined the BTPFSF on 17 May 1976 and left on 28 May 1988. The length of Mr N's qualifying service used in determining eligibility to benefits in the BTPFSF was therefore 12 years 12 days.
6. The length of reckonable service used in the calculation of Mr N's deferred benefits in the BTPFSF was 13 years 297 days representing his "period of service" from 5 August 1974 to 28 May 1988.
7. RPMI (formerly known as Pensions Management) sent Mr N a letter dated 7 July 1988 showing that the benefits available to him in the BTPFSF from 12 November 2012, his 65th birthday, would be a tax-free lump sum of £4,972.75 and a pension of £2,486.79 pa, to be increased during deferment.

8. During 1992, Mr N considered a transfer of his pension rights from the BTPFSF to the West Midlands Metropolitan Authorities Superannuation Fund which was renamed later as the WMPF.
9. In a letter dated 3 February 1992 to Mr N, RPMI wrote that:

“I refer to a request for a payment of a TV...will you please complete and return to me the attached certificate, permitting me to divulge information to the administrator of your new pension scheme.”
10. Mr N provided WMPF on 1 May 1992 with his letter of authority for RPMI to supply WMPF with a TV quotation.
11. In his letter dated 20 September 1992 to RPMI, Mr N wrote that:

“I have recently been in touch with the West Midlands Metropolitan Authorities Superannuation Fund, who are conducting enquiries with you on my behalf with a transfer value of pension.

Months have passed now since enquiries were first made...I would appreciate your help in attending to this matter, as soon as possible, before I take legal advice.”
12. RPMI informed Mr N in a letter dated 1 October 1992 that it was discussing the possibility of TVs being paid on “a year for year membership basis” with the Home Office.
13. According to a telephone note made by RPMI in December 1992:
 - it had explained to Mr N what the “Public Sector Transfer Club” (**the Club**) was; and
 - Mr N had replied that he was “OK” with the transfer delay but wanted to know how much longer the transfer would take.
14. RPMI informed Mr N in a letter dated 27 January 1993 that:
 - it had not yet been able to reach an agreement with the Home Office on the basis for calculating TVs available from the BTPFSF;
 - the TV available to him could, however, be calculated using a prescribed basis agreed by the actuary; and
 - if he wished to continue with the transfer, he should inform it accordingly.
15. Mr N replied on 1 February 1993 to RPMI as follows:

“You do not appear to have provided me with TV figures...

I do wish to transfer my pension however and hope you will provide these figures to my pension department West Midlands Metropolitan Authorities Superannuation Fund – before I agree to transfer.

I was led to believe that it was to my benefit if I waited after discussions with the Home Office, would you enlighten me further on this and provide me with a copy of my present transfer entitlement values.”

16. In its letter dated 5 February 1993 to Mr N, RPMI said that:

“...I am currently awaiting a decision from the Home Office regarding the membership of the BTPFSF in respect of transfers of pension rights under the Club. As a decision has not yet been agreed...I am not as yet providing TV figures under the “transfer club” basis.

I confirm that details of the TV have been forwarded to WMPF, however this information is not on the “transfer club” basis.”

17. According to a “Transfer Value Out Quotation” dated 2 February 1993, the transfer value available to Mr N excluding his Additional Voluntary Contributions (**AVCs**) was £28,926.44.

18. WMPF sent Mr N a letter, reference number, 114/57110548, dated 31 March 1993 which said that:

“I refer to the possible transfer of your accrued pension rights to the Local Government Scheme.

The manager of your former pension scheme has informed me that the transfer value, in respect of your previous service with BTPFSF from 15 July 1976 to 28 May 1988 amounts to £28,926.44.

Based on factors currently applying and, if chosen, subject to review at the date when actual payment of the transfer value is made, the amount of reckonable and qualifying service with which you would be credited within the Local Government Superannuation Scheme is as follows:

Length of reckonable service to be used in the calculation of future retirement benefits: 13 years 140 days (estimate)

Length of qualifying service to be used in determining eligibility to benefits: 12 years 12 days.”

19. On 4 April 1993, Mr N signed RPMI’s “Transfer Value – Form of Indemnity” (**the Indemnity Form**) and WMPF’s “Member’s Formal Election to Transfer Previous Pension Rights to the Local Government Superannuation Scheme” (**the Form of Election**).

20. By signing the Indemnity Form, Mr N declared that he wished to transfer the TV available to him as shown on a proposal/quotation dated 31 March 1993 with reference number 114/57110548 to the WMPF. According to the completed Indemnity Form, a copy of the proposal/quotation was attached to it.

21. RPMI sent a "Certificate of Transfer of Pension Rights" to WMPF dated 18 May 1993 showing that it had paid a TV of £29,890.83 (excluding AVCs) for Mr N.
22. Mr N's AVC fund of £360.74 in the BTPFSF was subsequently transferred into the WMPF after Mr N completed WMPF's "Member's Election in Respect of Previous Accumulated AVC Fund" on 12 June 1993. According to WMPF's letter dated 9 June 1993 to Mr N, this AVC fund would purchase an additional 54 days' reckonable service (estimated) in the WMPF.
23. A total TV of £30,251.57 was therefore transferred from BTPFSF to WMPF for Mr N.
24. WMPF sent Mr N a "Statutory Notification" dated 31 October 1994 showing that he received an additional 13 years 203 days' reckonable service in the WMPF following the transfer of pension rights from the BTPFSF.
25. Mr N retired on the grounds of ill health on 30 March 1996 and received an IHER pension of £5,124 pa and a lump sum of £15,372.01 calculated, as confirmed by WMPF, in accordance with the Local Government Pension Scheme Regulations 1995 (**the 1995 Regulations**).
26. According to WMPF's IHER benefit statement for Mr N:
 - Mr N's reckonable service was 18 years 50 days*; and
 - he received an "enhancement for ill health" of 6 years 243 days.

*WMPF said that this was calculated by adding Mr N's reckonable service of 4 years 212 days accrued whilst working for Birmingham Airport to the additional 13 years 203 days' reckonable service available following the transfer of his pension rights from the BTPFSF. WMPF confirmed that "the transfer in from the BTPFSF was included in the calculation of his benefits and taken into consideration in awarding a higher ill health enhancement."

27. WMPF also provided an extract from a scheme booklet published at the time of Mr N's retirement in 1996 showing that the pension and lump sum available to him on IHER would be calculated in the same way as standard retirement benefits except that the total membership used would only be increased if it was five years or more.
28. The booklet showed that the amount by which membership would be increased was:

"Total Membership Awarded	Total Membership After Increases
Less than 5 years	Actual Total Membership Only
Between 5-10 years	Total Membership doubled
Between 10 & 13 1/3 years	Total Membership increased to 20 years
Between 13 1/3 and 33 1/3 years	Total Membership increased by 6 2/3 years
Between 33 1/3 and 40 years.	Total Membership increased to 40 years

29. Mr N says that:

- he did not receive a quotation from RPMI showing the total TV available to him (including AVCs) of £30,251.57 before he signed and returned the Form of Election and the Indemnity Form on 4 April 1993;
- he did not sign a form authorising the Trustees of the BTPFSF to transfer £30,251.57 into the WMPF because RPMI did not send him such a form for completion;
- he had not consequently given RPMI his consent to transfer this amount from BTPFSF to the WMPF yet RPMI finalised the transfer in any case;
- if RPMI had informed him of the total TV of £30,251.57, he would have asked it why the figure was so low because he was expecting a six-figure sum;
- RPMI had therefore denied him the opportunity to question the TV amount before the transfer proceeded;
- if the transfer had not taken place, he would be entitled to retirement benefits from the BTPFSF which he could have taken early, in addition to the identical benefits which he is receiving from WMPF on IHER;
- he decided to transfer his pension rights from the BTPFSF into the WMPF because he thought that he would receive additional retirement benefits on top of those which he directly accrued in the WMPF;
- if RPMI had informed him that the WMPF “covered full early retirement pay-out through ill health” and his BTPFSF pension would be “swallowed up” in the WMPF on IHER, he would not have proceeded with the transfer;
- RPMI had therefore failed to provide him with adequate information and advice in order to decide whether transferring his BTPFSF pension rights to the WMPF would be in his best financial interests;
- he disagrees with RPMI’s view that he would not have received the same IHER pension from WMPF if it he had not transferred his pension rights from BTPFSF;
- in his view, the 1995 Regulations says that he was entitled to a statutory pension entitlement and lump sum due to permanent ill health “payable and calculated as if I had retired at age 65”;
- WMPF sent him a letter in June 2017 which said that:
 - a) if a person is considered eligible for IHER, his/her pension benefits are assessed as if they would come into payment at his/her normal pension age (**NPA**);

b) in the case of IHER, a person is credited as if he/she had retired at NPA and his/her benefits are not reduced; and

- the transfer of pension rights to WMPF was consequently “illegal” and “mis-sold” to him.

30. Mr N also contends that:

- he was informed by his “Airport Security Supervisor” at Birmingham Airport that, after working there for 12 months, he would be fully covered for IHER in the WMPF;
- his supervisor also told him that “it was a gold-plated pension” and he “would be retired off as if he had reached full retirement age”.
- he investigated the possibility of transferring his pension rights available in the BTPFSF to WMPF through “Airport Security”;
- he did not ask RPMI to provide him with TV details during 1992;
- he did not (a) receive RPMI’s letter dated 1 October 1992, (b) have the telephone conversation with RPMI in December 1992, (c) receive RPMI’s letter dated 27 January 1993 (d) send a reply on 1 February 1993 to RPMI (e) receive RPMI’s letter dated 5 February 1993, (f) receive the “Transfer Value Out Quotation” dated 2 February 1993, (g) receive WMPF’s letter dated 31 March 1993 and (h) the “Statutory Notification” dated 31 October 1994 from WMPF;
- he did not receive any transfer forms for completion in the post or telephone calls from RPMI to seek confirmation that he had received them;
- he did not sign RPMI’s Indemnity Form on 4 April 1993; and
- the only form which he signed concerned his AVC benefits in the BTPFSF and his “Airport Security Supervisor” had handed this form to him.

31. RPMI says that:

- if the transfer had not taken place, Mr N would have received a pension of £5,710.66 pa and a lump sum of £11,419.42 from the BTPFSF on attaining Normal Retirement Date (**NRD**), his 65th birthday, 12 November 2012;
- the IHER pension available to him from the WMPF as at 12 November 2012 was £8,052.87 pa;
- this would have been only £1,488.89 pa as at 12 November 2012 if the transfer of his BTPFSF pension rights to WMPF had not gone ahead;
- his total pension available from BTPFSF and WMPF as at 12 November 2012 would therefore have been £7,199.55 pa if the transfer had not proceeded;

- this amount was less than what was payable from his enhanced IHER pension in the WMPF at that date which amounted to £8,052.87 pa as a result of the transfer;
- it had correctly followed its administrative procedures at the time to deal with Mr N's transfer; and
- it is not authorised to provide Mr N with financial advice on whether transferring his BTPFSF pension rights to WMPF would be in his best interests; and
- it was not responsible for providing Mr N with information on how his retirement benefits in the WMPF would be calculated.

Adjudicator's Opinion

32. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by RPMI. The Adjudicator's findings are summarised briefly below.
33. The Local Government Pension Scheme (**LGPS**) is a "public service pension scheme" and operates as a centralised arrangement with each "administering authority" maintaining its own fund within the LGPS.
34. The WMPF is one such fund within the LGPS which is governed by the Local Government Pension Scheme Regulations (**the LGPS Regulations**). The current LGPS Regulations are the 2013 Regulations (as amended).
35. It was clear from the evidence that WMPF sent Mr N a letter dated 31 March 1993, with reference number, 114/57110548, which said that:
 - RPMI had notified it that the current TV available to him (excluding AVCs) was £28,926.44; and
 - the estimated additional reckonable service available if he decided to transfer his BTPFSF pension rights into the WMPF was 13 years 140 days.
36. By signing RPMI's Indemnity Form on 4 April 1993, Mr N declared that:
 - he gave his consent for a transfer of the TV available to him as shown on a proposal/quotation dated 31 March 1993 with reference number 114/57110548;
 - he had attached a copy of this proposal/quotation to it; and
 - he understood that, following the transfer, neither he, his wife or dependants would have any further entitlement in the transferring scheme.
37. The proposal/quotation which Mr N attached to the Indemnity Form was most likely WMPF's letter dated 31 March 1993, with reference number, 114/57110548. The Adjudicator was consequently satisfied that Mr N had been made aware from the

letter dated 31 March 1993 that his current TV (excluding AVCs) available in the BTPFSF was only £28,926.44.

38. If Mr N had been concerned that this figure seemed much lower than what he was expecting, he should have at this point queried how it was calculated with RPMI before signing and returning the Indemnity Form. Mr N did not however take this opportunity at the time.
39. RPMI was not obliged to seek confirmation that Mr N still wished to proceed with the transfer after recalculating his current TV (excluding AVCs) to be a higher figure of £29,890.83. Mr N's completed Indemnity Form dated 4 April 1993 was adequate for its purposes. It did not require any additional forms to be signed and returned by Mr N in order to complete the transfer.
40. There was no evidence that the TV available to Mr N of £29,890.83 (excluding AVCs) has been calculated incorrectly. If the figure was, as Mr N believes, much lower than what it should be, it was reasonable to expect that the service credit available to him in the WMPF would be significantly lower than what he was awarded when the reverse calculation was performed.
41. The version of the LGPS Regulations which applied at the time when Mr N retired on the grounds of ill health in March 1996 was the 1995 Regulations. He was not entitled to have his IHER benefits recalculated in accordance with the 2013 Regulations which provided more generous benefits on IHER.
42. Mr N's IHER benefits available in WMPF were calculated in accordance with clause D7 entitled "Early entitlement to retirement benefits: ill-health" of the 1995 Regulations which states that:

"Where the member's total period of membership is at least 5 years, he is to be treated for the purposes of this regulation as being entitled to count as a period of membership an additional period calculated in accordance with **Schedule D3**."
43. Schedule D3 entitled "Additional Membership in Cases of Ill-Health" states:

"Calculation of additional membership period

2 (1) Subject to paragraphs 3 and 4, the additional membership period is -

 - (a) in a case where the length of the relevant membership period is less than 10 years, a period equal to the length of the relevant membership period; and
 - (b) in any other case -
 - (i) the period by which the length of the relevant membership period falls short of 20 years, or
 - (ii) if longer, $6 \frac{243}{365}$ years.

(2) The additional membership period is not to exceed the period by which the member period of membership would have been increased if he had continued in the employment which he has ceased to hold until -

(a) he attained the age of 65 years, or

(b) if earlier, the date when his period of membership amounted to 40 years.”

44. When Mr N retired on 30 March 1996, he had directly accrued 4 years 212 days’ reckonable service in WMPF. If he had not transferred in his pension rights from the BTPFSF, equivalent to an additional 13 years 203 days’ reckonable service in the WMPF, his IHER pension would have been calculated using his actual reckonable service of 4 years 212 days only and, not as Mr N incorrectly believes, his prospective reckonable service up to his NRD.
45. As a result of transferring his pension rights from the BTPFSF into the WMPF, Mr N’s total reckonable service of 18 years 50 days was therefore between 13 ¹/₃ and 33 ¹/₃ years. He was consequently awarded the additional 6 ²/₃ years used in the calculation of his IHER benefits in accordance with the 1995 Regulations.
46. Mr N’s IHER benefits in March 1996 would not have been the same if he had not transferred his benefits from BTPFSF to the WMPF. Mr N could now have two separate IHER pensions if the transfer had not taken place. RPMI has, however, calculated that Mr N is in fact financially better off by having a single enhanced IHER pension available from the WMPF.
47. Whilst it was unclear from the available evidence whether RPMI provided Mr N directly with details of the TV (excluding AVCs) available to him of £28,926.44, as requested, the fact that Mr N received this TV figure and details of estimated reckonable service which could be purchased in WMPF’s letter dated 31 March 1993 cannot be disregarded. It had therefore been open to Mr N to investigate whether transferring his pension rights from BTPFSF to WMPF would be in his best interests after seeking independent financial advice, if necessary, before proceeding with it.
48. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N provided 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 N for completeness.

Ombudsman’s decision

49. Mr N’s recollections of the events which took place some 27 years ago that led to the transfer of his pension rights from the BTPFSF to WMPF are noticeably different to RPMI’s view on what happened. RPMI have provided me with documentary evidence showing that a transfer value was produced in respect of Mr N’s benefits as a result of which he was given a credit in the WMPF scheme, that he signed a form of indemnity on 4 April 1993 and a Certificate of Transfer of Pension Rights was issued

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on 18 May 1993. The only evidence which Mr N has proffered to corroborate his alternative version of events is his recollection.

50. Without casting any doubt on the integrity of Mr N, these events were many years ago and his recollections could have been affected by the passage of time. I give greater weight to the documentary evidence which is now available and do not consider that there has been any maladministration on the part of RPMI.
51. There is also no evidence that Mr N would have been better off if he had not transferred his benefits from the BTPFSF into the WMPF.
52. For these reasons, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
19 September 2019