

Ombudsman's Determination

Applicant	Mr S
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Peninsula Pensions (PP)

Outcome

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

Complaint summary

3. Mr S' complaint is that PP:-
 - failed to tell him about the "pension freedoms" legislation introduced in April 2015 and how it could affect his options when drawing his LGPS benefits;
 - failed to inform him that, if he wanted to transfer his preserved LGPS benefits to an alternative pension scheme, he would have to apply to do so no later than 12 months after his Normal Retirement Date (**NRD**); and
 - issued a Cash Equivalent Transfer Value (**CETV**) quotation in April 2016 which strongly implied that he could transfer his preserved LGPS benefits to an alternative, defined contribution, pension scheme at that point.

Background information, including submissions from the parties

4. On 11 April 2016, PP, as LGPS administrators, wrote to Mr S enclosing a CETV quotation. The letter was headed "transfer out" and read:-

"I am pleased to enclose my quotation of the transfer value payable in respect of pension rights accrued by the above-named in the LGPS. The amount (excluding any AVCs) will be guaranteed for three months from the date of this letter

...

If the transfer is to a scheme offering flexible benefits and the value of the member's benefits in the LGPS in England & Wales (excluding AVCs) is £30,000 or more, the member is required to take independent financial advice and the advice confirmation form must be returned before the transfer can be paid".

5. On 14 July 2016, PP wrote to Mr S as follows:-

"Under the LGPS regulations, a transfer is not payable in your case.

The Pension Schemes Act 1993, part 4ZA, chapter 1, section 95 (1A) (b) states:

(1A) In the case of a right acquired under section 94(1), the application must be made –

...

(b) if the cash equivalent relates to benefits that are not flexible benefits, by no later than the date that falls one year before the member attains normal pension age.

The normal pension age is the earliest date that the LGPS benefits are payable in full form; in your case this is your 60th birthday.

'Flexible benefits' mentioned above are either:

a money purchase benefit;

a cash balance benefit;

a benefit, other than a money purchase benefit or a cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor)".

6. Dissatisfied, Mr S complained to PP making the following points:-

- He was the director of a small business and, based on the 11 April 2015 CETV quotation, he gave assurances to his creditors regarding the repayment of pre-existing loans totalling £35,000.
- PP did not provide him with any advice in respect of the "pension freedom" legislation.
- He suffered distress due to PP erroneously telling him, on 11 April 2015, that he could transfer his preserved LGPS benefits to a defined contribution pension scheme.

7. PP considered Mr S' complaint under the LGPS independent dispute resolution procedure (**IDRP**). On 12 December 2016, LGPS responded as follows:-
- Under the provisions of the Pensions Schemes Act 1993, a CETV request must be made no later than 12 months before the member's NRD.
 - The "pension freedom" legislation does not apply to defined benefit pension schemes such as the LGPS. Accordingly, there was no requirement for PP to tell Mr S about the changes resulting from that legislation.
 - It accepted that it should have told Mr S that he did not meet the eligibility criteria for a CETV, apologised and offered him £500 for the distress and inconvenience caused by its maladministration.
8. Mr S did not accept this offer and submitted a stage 2 IDRP complaint to PP on 9 June 2017, assisted by the Pensions Advisory Service (**TPAS**). His appeal was as follows:-
- PP did not tell him that the 11 April 2015 CETV quotation was erroneous until July 2015. By then, he had already taken steps to use the approximately £49,000 cash lump sum that would have been accessible, had he been able to transfer the LGPS benefits to a defined contribution pension scheme.
 - This consisted of telling his creditors that he would soon be in a position to inject further funds into the business to assist in its expansion and generate capital in order to repay the outstanding loans.
 - He entered into a finance agreement on 13 April 2015, in reliance on the 11 April 2015 CETV quotation.
 - After it became apparent that the single cash lump sum would not be an available option, he had to reduce his holding in the business from 80% to 20%.
 - The business eventually entered into voluntary liquidation. He told TPAS this was because the premises were considered unsafe, in breach of the landlord's covenants. Although he was suing the landlord for costs, any money recovered would not cover all of the debts.
9. PP sent its stage 2 IDRP decision to TPAS on 25 August 2017, saying that it considered the original offer of an award of £500 for distress and inconvenience to be sufficient.

Adjudicator's Opinion

10. Mr S' complaint was considered by one of our Adjudicators, who concluded that no further action was required by PP. The Adjudicator's findings are summarised briefly below:-

- The legislation, introduced in April 2015, applied to defined contribution pensions, but not defined benefit arrangements. As Mr S' preserved LGPS pension was a defined benefit pension, there was no legal or regulatory requirement for PP to tell him about the "pension freedom" legislation.
 - Although, there is no legal or regulatory obligation on pension scheme administrators to tell members about the one year time limit, under the Pension Schemes Act 1993, for requesting a transfer, PP accepted that it should have made Mr S aware, in April 2015, that he could not transfer his preserved LGPS benefits to an alternative provider, as he was less than one year from his NRD. Despite this, Mr S can only receive the benefits provided for under the rules governing the LGPS.
 - An exception would be if there is evidence that financial loss, or non-financial injustice, flowed from the incorrect information PP provided on 11 April 2015. Mr S explained that he was looking to use the larger lump sum that could be accessible as a result of transferring his preserved LGPS benefits to a defined contribution scheme to inject cash into his business, and that he had told creditors that more cash would be available shortly. Since Mr S entered into these commitments before he received the April 2015 benefit statement, there is no evidence he suffered actual financial loss as a result of PP's maladministration. What he suffered was loss of expectation.
 - The £500 award which PP offered him for the distress and inconvenience caused by the loss of expectation was sufficient, in the circumstances.
11. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 S for completeness. In summary, these are:-
- The 11 April 2015 CETV quotation contained words such as "guarantees" and "transfer forms", and said the figures would have to be recalculated if a transfer request was not received by a certain date. Accordingly, he had no reason to doubt that he could transfer his LGPS benefits to a defined contribution scheme and thereby take advantage of the "pension freedom" legislation.
 - He entered into the finance agreement on 13 April 2015; after receipt of the 11 April 2015 CETV quotation. His objective was to inject cash into the business, which would have taken place, but for PP's refusal to permit a transfer to a defined contribution scheme.
 - PP failed to meet deadlines set by TPAS.

Ombudsman's decision

12. It is not disputed that PP's 11 April 2015 CETV quotation was misleading. PP accepts that it should have made Mr S aware that he could not transfer his LGPS benefits to an alternative pension scheme as he was less than 12 months from his NRD.
13. Broadly, I only provide redress in cases of this type if it can be shown that financial loss, or non-financial injustice, has been caused by the respondent providing incorrect or misleading information. As an example, the member may have made a decision in the expectation of receiving the higher benefits, which they would not otherwise have done. I also have to consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so.
14. Mr S has explained that he had outstanding loans totalling approximately £35,000 and that, thinking he would be able to take his whole pension as a single cash lump sum, he provided his creditors with assurances as to repayment. But these loans were prior commitments, and so I find that he did not take them out in reliance on the misleading information which PP sent him on 11 April 2015.
15. I acknowledge Mr S' testimony that he signed the finance agreement on 13 April 2015; after receiving the 11 April 2015 CETV quotation. I understand the finance agreement was entered into with the objective of injecting further cash into the business in order to help it to expand. However, since it later turned out that he was unable, under the terms of the LGPS, to transfer his benefits to an alternative, defined contribution, scheme, he was unable to do this. Since Mr S acknowledges in his further comments that the cash injections did not actually take place, I find no evidence of actual financial loss. What Mr S suffered was loss of expectation.
16. I have also considered the actions Mr S took after it emerged that he would not be able to take his whole pension as a single cash lump sum. It is the case that Mr S did not take any tax free lump sum from the LGPS after he learned, in July 2015, that he could not transfer his benefits into a defined contribution pension scheme. As at 11 April 2015, his preserved LGPS benefits totalled approximately £49,000. Commuting them into the maximum tax free lump sum would therefore have provided approximately £12,250 which he could have injected into the business if he so wished. However, there is no evidence that Mr S made any enquiries of PP with regard to his tax free lump sum options under the LGPS. In light of this, I am not persuaded that, once he was aware of all the facts, he still wished to inject further capital into the business.
17. Turning to the question of non-financial injustice; I accept that Mr S suffered distress and inconvenience as a result of the loss of expectation caused by PP's erroneous 11 April 2015 CETV quotation. I also recognise that PP delayed in responding to TPAS. For example, it took longer than the eight weeks stipulated under the LGPS IDRPs to issue the stage 2 IDRPs decision. However, I note that PP offered Mr S £500 for the distress and inconvenience caused by its maladministration. This is a

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significant sum and, in the circumstances, I do not consider PP should be required to award a higher figure. Mr S should contact PP direct if he wishes to take up its offer.

18. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
25 July 2018