

Ombudsman's Determination

Applicant	Mr L
Scheme	Northern Gas Networks Pension Scheme (the Scheme)
Respondents	Northern Gas Networks (the Company) Northern Gas Networks Pension Trustee Limited (the Trustee)

Outcome

1. I do not uphold Mr L's complaint against the Trustee.
2. Mr L's complaint against the Company is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld), the Company will pay £500 to Mr L to recognise the significant distress and inconvenience it has caused him.

Complaint summary

3. Mr L's complaint is that the Company did not permit him to take an unreduced Cash Equivalent Transfer Value (**CETV**).

Background information, including submissions from the parties

4. On 5 August 2016, the Company issued its consent for Mr L to take unreduced early retirement, through its early voluntary redundancy programme (**EVR programme**). Under the Rules of the Scheme, the Company consent applies only on the date on which the member's benefits come into payment, where they have retired from service.
5. Mr L did not take up the offer, instead, on 27 February 2017, Mr L gave notice to terminate his membership of the Scheme, with effect from 27 March 2017, his 57th birthday.
6. On 28 February 2017, the Company wrote to Mr L to confirm that as he was withdrawing his membership of the Scheme, and was not retiring, his employment would 'TUPE' transfer to new employer 'Penspen'. TUPE is an acronym for the Transfer of Undertakings (Protection of Employment) Regulations 2006.

7. On 27 March 2017, Mr L transferred his benefits from the Scheme to a personal pension arrangement.
8. On 3 April 2017, Mr L's employment was TUPE transferred to new employer Penspen.
9. In August 2017, the Company informed EVR programme members that, following a complaint raised by a Scheme member in March 2017, it had taken legal advice about the interpretation of the Scheme Rules and how these interacted with new pension legislation introduced in April 2015.
10. The Company made the decision to permit the application of the 'with consent' enhancement, for members who retired through the EVR programme, to transfer values. The Company confirmed that, for members who had retired early with consent, it would revisit transfer values paid since 6 April 2015.
11. Mr L raised a complaint through the Scheme's internal dispute resolution procedure (**IDRP**) as he felt he had been treated unfairly compared with other members who had been allowed an unreduced CETV.
12. The Trustee did not uphold Mr L's complaint at Stage 1 of the IDRP as Mr L had remained employed with the Company, and not 'retired with consent' which was a qualifying factor of the EVR programme and 'with consent' enhancement.
13. Unhappy with the response, Mr L asked the Trustee to consider his complaint under Stage 2 of the IDRP. Mr L said that his complaint had not been properly addressed, and reaffirmed that he was complaining because he should have been given the option to leave employment in order to take an unreduced CETV. He maintained that this option should have been given to him in March 2017, before he made his decision to transfer his benefits.
14. The Trustee's Stage 2 IDRP letter, dated 7 December 2017, quoted the following sections of the Scheme rules:

Early Retirement

"A member who retires from service before normal retirement age and:

- (1) has reached age 60; or
- (2) has reached age 55 and is retiring with the consent of his employer;

is entitled to immediate payment of the scale pension."

Right to transfer

"A member who is leaving or has left service with a deferred pension or a right to an immediate pension which has not come into payment or who leaves service (or opts out under DB rule 1.2) with a deferred pension under DB rule 4.1 has a right to require the trustees to use the cash equivalent as defined in the 1993 act to acquire benefits under another scheme....or to purchase a buy out policy...The member can

exercise this right by application in writing to the trustees at any time up to the later of the date he reaches age 60 and the date he leaves (or otherwise if the trustees consent).”

15. The Stage 2 IDRPs decision letter explained that Mr L made the decision to withdraw from the EVR programme and instead remain employed, which led to his participation in the transfer of employment from the Company. The Trustee said that the option Mr L argued that he should have been given before he made his decision “was not within the Trustee’s power to grant”.

16. In a follow up letter to Mr L, on 25 January 2018, the Trustee said:

“Following introduction of the new pension flexibility legislation in April 2015, the Company advised the Trustee that the transfer calculation for members leaving under the Company’s early retirement programme would not include the value of the ‘with consent’ benefit. Due to the complexities of the interaction of the new pension flexibility legislation with the Scheme Rules. The advice received was that, on the basis that formal consent was not provided to members until the day their pension was due to come into payment, this interpretation of the Scheme Rules was acceptable. Therefore, the Trustee’s role was to confirm it had no objection to the calculation rather than to decide how the calculation should be completed under the Scheme Rules. This process took some time to complete and took place in the second half of 2015. Prior to April 2015, there had been no experience of members choosing to transfer out of the Scheme rather than receive a pension and therefore, the point of how transfer values should be calculated for members retiring ‘with consent’ was only raised after April 2015 when some retiring members began to enquire about transferring their benefits instead of receiving a pension.”

17. Mr L raised a grievance with the Company. The initial grievance report, dated 13 March 2018, said:

“It is reasonable to expect that, in possession of this information, [Mr L’s] decision would have been impacted or that, at the very least he would have considered whether it would be beneficial to him to leave under the over 55s scheme in order to receive the enhanced transfer value, particularly if, as we are led believe, [Mr L] was confident that he would be offered a position with [a Company] contractor regardless of whether he was included in the TUPE process. It is noted that there is no documented evidence that [Mr L] would have been offered a position with Penspen had he not been included in the TUPE process.

Based on the above, is it fair to conclude that [Mr L] was disadvantaged by the previous application of the scheme benefit rules regardless of his subsequent decision to remain in employment. It is also fair to state that the action taken

by [the Company] subsequent to the change in their interpretation of the scheme rules, does not act in any way to address this disadvantage.”

18. The Company’s final response to the grievance, dated 1 May 2018, reversed the preliminary decision. This final response explained that the correct rules had been applied at the time Mr L transferred out his Scheme benefits. The Company said that, as Mr L had withdrawn from the EVR programme and remained in employment, he did not qualify for pension benefits or a transfer value incorporating the Company’s ‘with consent’ enhancement.
19. Mr L has explained that he transferred out his retirement benefits from the Scheme, as he was concerned about the rights he might lose if his employment and pension benefits were TUPE transferred to Penspen. He has said that he felt it was more secure to move his accrued benefits to a personal arrangement and that he could seek employment elsewhere, or as contracted employee to Penspen, if he still had concerns about the new TUPE contract with Penspen.

Adjudicator’s Opinion

20. Mr L’s complaint was considered by one of our Adjudicators who concluded that, whilst Mr L was not entitled to the ‘with consent’ enhancement, the Company caused him significant distress and inconvenience during the grievance process. The Adjudicator’s findings are summarised below:-
 - The Trustee cannot provide Mr L with an unreduced CETV without the Company’s consent.
 - Mr L did not retire or leave employment, which were requirements of the EVR programme.
 - When Mr L transferred his benefits and TUPE transferred, the Company was not offering the ‘with consent’ enhancement to CETVs, so this option could not have been given to Mr L at the time, and so the Company has not failed in its duty of care.
 - Mr L was provided with correct information by the Company at that time.
 - The Company could not reasonably have known that it would later extend the ‘with consent’ enhancement to EVR programme members who transferred out their benefits.
 - In the Company’s initial grievance response, it suggested to Mr L that he had been financially disadvantaged, and his complaint would be upheld, however it changed its stance in its final grievance response, which unfairly raised Mr L’s expectations. The Company should make an award for the distress and inconvenience this caused.

21. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L 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 L for completeness.

Summary of Mr L's position

22. Upon receiving the complaint from the member in March 2017, the Company and the Trustee ought to have informed all members aged 55 and over, as the result of the complaint might have impacted this group.
23. Mr L argues that, had he been notified of the complaint when it was made, he would have made a different decision.
24. Mr L maintains that his CETV was incorrect.
25. The Company and the Trustee have failed in their duty of care to members.
26. If Mr L had been told in March 2017 that he would need to leave employment in order to obtain an unreduced CETV, he would have taken this option.
27. The fact that the Company has amended its approach to some members means it made a mistake in its previous interpretation of the Scheme rules.

Ombudsman's decision

28. Mr L has argued that the Company should have told all members about the complaint made by another member in March 2017. The Company needed to investigate the complaint and seek legal advice before making a decision on the outcome. I do not find that the Company had a responsibility to inform all members that a complaint had been made. The Company could not have known just by the complaint being raised that it would later change its approach to permit the application of the 'with consent' enhancement to transfer values, for members who retired through the EVR programme. If the Company had told Mr L of the complaint in March 2017, this would not have given him any advance warning of what might later be decided.
29. Mr L made the decision not to take redundancy and to remain employed. He has said that he had concerns about the new contract and pension arrangement with the new employer, which is why he transferred his benefits, but chose to remain employed. Mr L has argued that he would have been able to find new employment directly with Penspen (as opposed to the TUPE contract) and so would have resigned from employment with the Company in order to be eligible for an unreduced transfer value as part of the EVR programme. The option of leaving employment with the Company was open to Mr L, so if he indeed wanted to leave employment he would have done so. Mr L has said that the Company should have told him in March 2017, that he would need to leave his employment in order to obtain the unreduced transfer value.

However, the Company would not have known in March 2017, and so could not have told him what it would later decide.

30. Some members chose to leave employment and resign through the EVR programme, and either took retirement benefits or transferred their pension benefits, but all left employment with the Company. The Company reviewed the benefits payable to those members and decided to adjust the parameters, retrospectively applying this change to EVR programme members. Mr L did not resign, was not a member of the EVR programme, and so is not eligible. It is only with the benefit of hindsight that Mr L can say that the Company's alteration to the pension calculations could have impacted his overall decision making.
31. I am satisfied that Mr L received the value of transferred benefits to which he was entitled when he transferred his benefits to a SIPP on 27 March 2017.
32. Mr L has said that because the Company changed its approach meant that its original position was wrong. The Company sought legal advice and amended the criteria to the application of its EVR programme, as it is entitled to do. This does not automatically imply that the previous criteria was incorrect.
33. I note that the initial grievance report of 13 March 2018, set out the reasons why Mr L's complaint should be upheld. But then, on review the Company informed Mr L that his complaint would not be upheld. Whilst the Company was entitled to change its opinion on how to decide Mr L's complaint, I agree that upholding the grievance in the initial response would have undoubtedly raised Mr L's expectations.
34. Therefore, I partly uphold Mr L's complaint.

Directions

35. Within 28 days of the date of this Determination, the Company shall pay £500 to Mr L to recognise the significant distress and inconvenience it has caused to Mr L.

Anthony Arter

Pensions Ombudsman
21 November 2019