

Ombudsman's Determination

Applicant	Mr R
Scheme	Police Pension Scheme (the Scheme)
Respondent	South Wales Police (SWP)

Outcome

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

Complaint summary

3. Mr R complains that SWP is preventing him from transferring out the benefits which he had previously transferred into the Scheme.

Background information, including submissions from the parties

4. SWP is responsible for the Scheme and has outsourced its administration to CAPITA. SWP has taken responsibility for CAPITA's actions. Therefore, for the purposes of clarity I have referred only to SWP in this Determination.
5. Mr R has said that in 1987, he began paying into a defined contribution (**DC**) scheme, where he accrued a sum of £103,878, which was placed with Standard Life.
6. In May 2016, Mr R commenced new employment with SWP. Mr R joined the Scheme and made an application to transfer in benefits from his previous DC scheme held with Standard Life. Mr R transferred the accrued sum of £103,878, with the intention of remaining in employment with SWP until his retirement age of 60. As a result of the transfer from Standard Life, Mr R was credited with an additional fixed annual pension of £5,743.62 for the benefits accrued in the Scheme.
7. Due to unforeseen circumstances at the force Mr R resigned from SWP in April 2017, having completed 11 months' service.
8. In May 2017, Mr R requested to transfer his benefits out of the Scheme. Initially, Mr R received an email from SWP which contained an incorrect (**CETV**) of £68,621.69. As this was lower than the amount Mr R transferred into the Scheme, he was aware that

an error had occurred and raised a formal complaint with SWP using the Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**).

9. SWP confirmed that the CETV of £68,621.69 was incorrect as the calculation did not consider the underpin which exists to protect the value of transferred in benefits. Mr R was subsequently sent a new CETV and made a request to transfer his benefits to a DC scheme with Hargreaves Lansdown.
10. On 19 January 2018, Mr R sent an email to SWP saying that Hargreaves Lansdown had informed him that SWP refused to transfer his pension benefits out of the Scheme. SWP said his benefits in the Scheme can only be transferred to another Defined Benefits (**DB**) scheme. Mr R explained that his situation was different from a standard transfer out, because the money he initially transferred into the Scheme was made up of investments held solely in his DC scheme accrued over 20 years.
11. On 23 January 2018, Mr R received an email from SWP in response. This email explained that there was a general prohibition on transfers from unfunded public service pension schemes to arrangements that provide flexible benefits, such as a DC scheme. Therefore, he would not be able to transfer his pension benefits to a DC scheme.
12. Mr R remained dissatisfied and escalated his concerns to IDRP stage two. SWP initially said that there had been no IDRP stage one response in relation to his complaint of being unable to transfer, as it viewed this as a new issue. However, Mr R insisted that this was the same problem and so the stage two decision maker provided a response under IDRP stage two.
13. On 30 July 2018, the stage two decision letter was sent to Mr R.
14. Mr R's complaint was not upheld on the basis that legislation only permits transfers from unfunded public service pension schemes to another pension scheme that does not offer flexible benefits. SWP referenced information from The Unfunded Public Service Defined Benefits Schemes (Transfers) Regulations 2015 (**the 2015 Regulations**), which referred to a member transferring overseas. It also referenced information from the Pension Schemes Act 2015 (**the 2015 Act**).
15. Mr R was unhappy with the response and asked my Office to look into his complaint. He raised the following points against SWP regarding the information he was provided with when he applied to transfer his pension benefits into the Scheme:
 - no warnings on the transfer-in documentation to explain he could not transfer out his pension benefits once he transferred them into the Scheme; and
 - no questions which asked him if he had sought any financial advice or provided an explanation of what "unfunded" meant.
16. Consequently, Mr R has said that as a direct result of being unable to transfer out his pension benefits to another DC scheme, this will negatively impact his future retirement income.

17. On 26 October 2018, SWP provided its formal response to us in which it repeated the arguments put forward in the IDRP. SWP said that Mr R also made an application to transfer in his benefits from his previous Makro pension DB scheme. It supplied copies of the correspondence sent to Mr R from Standard Life and Makro, which he was required to read and sign before the transfers could complete. SWP said that there was sufficient information within these documents to encourage Mr R to seek independent financial advice.
18. On 29 November 2018, SWP provided additional information. SWP initially said, in previous correspondence, that Mr R transferred in benefits from the Standard Life and Makro schemes. However, upon clarification the benefits from Mr R's Makro scheme were not transferred, as Mr R cancelled his request on 15 November 2016.
19. On 20 December 2018, SWP provided details concerning the documents Mr R was provided with and whom he could contact when he began employment and joined the Scheme. SWP said that its HR Shared Services unit provides a "starters' pack" to all new employees providing relevant and appropriate information. SWP said that confirmation of auto-enrolment to the appropriate Scheme, and the right to opt out, is included within the "starter pack". It said that once an employee has been auto-enrolled, SWP notify the Scheme of the new entrant, which provides them with a "welcome letter". This letter contains information regarding how employees can transfer previous pension benefits into the Scheme. The "welcome letter" said that SWP could make enquiries on an employee's behalf and supply them with a quotation of benefits.
20. It provided the following warning:

"It should be stressed that a quotation is purely for your information and you have the choice of accepting or declining the transfer once you have considered the details. It is recommended that you seek independent financial advice before deciding whether to accept a transfer into the Scheme".
21. SWP confirmed that it does not know the specific dates when the "starter pack" and "welcome letter" were issued to Mr R. It has said, however, that a new employee cannot be placed on the payroll without completing the forms included in the "starter pack". In addition, the Scheme's process includes a requirement to issue the "welcome letter", as part of creating a pension record on its system.
22. SWP also confirmed that Mr R would have had access to the intranet called "BoB". It said all new employees were guided towards "BoB" during their induction periods and would have used it daily. SWP said the intranet enabled Mr R to have access to the Member Guide 2015. This states under section 11.2.1, "Transfers to other pension schemes":

"The transfer payment will be in the form of a cash equivalent transfer value. The government intends to restrict transfers from unfunded public service pension schemes (such as the police pension schemes) into Defined

Contribution Pension Schemes and other flexible benefit arrangements from 6 April 2015.”

Adjudicator’s Opinion

23. Ms N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by SWP. The Adjudicator’s findings are summarised below: -

- With effect from 6 April 2015, amendments were made to the Pension Schemes Act 1993 (**the 1993 Act**) under the 2015 Act. This provided pension flexibilities, or “pension freedoms” which could be made available from certain schemes. However, Section 68 of the 2015 Act, amends Section 95 of the 1993 Act, to restrict transfers out of unfunded public service DB schemes to schemes offering flexible benefits.
- The Adjudicator noted that this restriction did not apply if the scheme to which the transfer is to be made satisfies the requirements prescribed in these regulations. This means that although Mr R is able to transfer benefits out he is restricted on the type of schemes he can transfer into. Essentially, he is only able to transfer to another DB scheme that does not offer flexible benefits.
- Mr R signed documentation to transfer his previous pension benefits into the Scheme and he was provided with an additional fixed annual pension of £5,743 for the benefits transferred. By agreeing to the transfer Mr R agreed to the conversion of his DC benefits into a DB pension.
- Mr R argued that SWP did not make him aware that any future transfer out would be restricted. He also says that SWP did not encourage him to seek independent financial advice.
- The Adjudicator was satisfied that sufficient information was provided to Mr R when he began his employment and in the ‘transfer out’ documentation. Standard Life’s transfer-out documents included a “Pension Scams Information Booklet”. Whilst this provides information about scams, it also encourages those looking to transfer to seek independent financial advice.
- The information in the “welcome letter” contained a warning (see paragraph 20 above), with a recommendation for Mr R to seek independent financial advice. SWP has confirmed it could not confirm the date the “welcome letter” was issued, however, it said an employee cannot be placed on the payroll without completing specific forms within the starter pack. Therefore, it was more than likely that the pack was issued to Mr R when he joined the Scheme. The “BoB” intranet would have provided Mr R with sufficient information to make him aware of the restrictions on transfers out of the Scheme. This information was readily available for Mr R to view on the “BoB” intranet which he most likely would have used regularly.

- SWP, in these particular circumstances, is not obligated under any legislation to provide the information that Mr R has complained he has not received. Furthermore, there is no evidence that Mr R sought any clarification from SWP during the transfer in process. Had Mr R been unsure at any point, he could have brought this to the attention of SWP, in order to enable it to provide him with the relevant information.
- In the Adjudicator's view, SWP acted in accordance with the information it received and arranged the transfer from Standard Life to the Scheme. SWP is now unable to lawfully authorise the transfer out to Hargreaves Lansdown

24. SWP provided no further comments. However, Mr R did not accept the Adjudicator's Opinion and provided further comments as set out below.

Summary of Ms E's further comments

- The Standard Life "Pensions Scams Information Document" was provided to him after he had returned the signed pension forms.
- Mr R says that when he started employment with SWP, at no point were new recruit's understanding of employee policy and process checked. He says that he was not directed to a section on the "BOB" intranet which provided warnings to seek independent financial advice when transferring in a pension. Mr R argues that SWP are unable to prove he received the "welcome letter" or that he viewed the information on the "BOB" pensions page.
- Mr R has argued that his consent to transfer, was not informed consent as it was given without the full facts or consequences being explained to him. He says there were no warnings at the point of transfer or at a prior stage and he was not alerted to the fact that, although the transfer in of DC benefits would boost his DB benefits it would restrict his ability to transfer out. He says that under the Consumer Rights Act 2015 (**the 2015 act**), an organisation must clearly and prominently display any terms which could unfairly impact upon the consumer at point of agreement.
- He has said that he does not feel it reasonable for a new recruit to be expected to enquire as to whether there are any detrimental terms in the transfer documentation.

25. Mr R's further comments 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 R for completeness.

Ombudsman's decision

26. Mr R's first point concerns the "Pension Scams Information Document" from Standard Life. He asserts that this was provided to him after he had returned the signed pension forms to Standard Life. SWP has said that he was sent a "Joint Pensions Wise, Action Fraud and Pensions' Advisory Service Booklet" (**the Booklet**), as a part of the initial transfer request from Makro. This was provided to Mr R prior to him completing the transfer documentation to Standard Life. Whilst I appreciate that the Makro transfer did not complete, the information provided to Mr R in the Booklet would have guided him to seek appropriate and independent financial advice before making important financial decisions such as the transfer from Standard Life.
27. Second, Mr R contends that SWP are unable to prove that he received a "welcome letter" or that he reviewed the information on the "BoB" intranet page. However, I agree with the Adjudicator that it is more likely than not that a "welcome letter" was issued to Mr R when he joined the Scheme, as an employee cannot be placed on the payroll without completing forms in the starter pack. I also agree that the "BoB" intranet provided sufficient information for him to be aware of the restriction on transfers out of the Scheme. The responsibility does not fall on SWP to inform him of this information.
28. Third, Mr R has referred to the Consumer Rights Act 2015. He has explained that it was the responsibility of SWP to make him fully aware of the facts and consequences of the transfer from Standard Life. However, I do not consider that the 2015 Act applies in these circumstances. Section 48 of the 2015 Act, sets out what types of contract are covered. It applies to a contract for a trader to supply a service to a consumer and specifically excludes a contract of employment. In Mr R's case, it is not a contract for the supply of services to a consumer, as protected by the Consumer Rights Act. Mr R is a member of a public service pension scheme governed by statute.
29. Fourth, it is the members responsibility to determine if a certain option is suitable in his or her circumstances and to obtain advice if they feel it necessary. I do not agree that there were "detrimental terms in the transfer documentation", and there was no obligation for SWP to provide further information to Mr R. SWP was not aware of Mr R's personal circumstances or of his future intentions, and it is not able to provide financial advice. Therefore, it was not to know that Mr R would consider the statutory restriction on transferring out, as detrimental to him.
30. Whilst I am sympathetic to the situation in which Mr R now finds himself, SWP is not obligated under any legislation to have informed him of the restrictions of transfers out of the Scheme. SWP is prevented by legislation from authorising the transfer to the Hargreaves Lansdown pension arrangement and I have seen no indication from Mr R that he sought to clarify this with SWP.

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31. I therefore do not uphold his complaint.

Anthony Arter

Pensions Ombudsman

25 June 2019

Appendix

Pensions Scheme Act 2015

68 Restriction on transfers out of unfunded public service defined benefits schemes: Great Britain

(1) The Pensions Scheme Act 1993 is amended as follows.

(2) In section 95 (ways of taking right to cash equivalent), in subsection (2), after “occupational pension scheme” insert “that is not an unfunded public service defined benefits scheme” .

(3) In section 95, after subsection (2) insert—

(2A) In the case of a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are—

(a) for acquiring transfer credits allowed under the rules of another occupational pension scheme if—

(i) the benefits that may be provided under the other scheme by virtue of the transfer credits are not flexible benefits,

(ii) the trustees or managers of the other scheme are able and willing to accept payment in respect of the member's transferrable rights, and

(iii) the other scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;

(b) for acquiring rights allowed under the rules of a personal pension scheme if—

(i) the benefits that may be provided under the personal pension scheme by virtue of the acquired rights are not flexible benefits,

(ii) the trustees or managers of the personal pension scheme are able and willing to accept payment in respect of the member's transferrable rights, and

(iii) the personal pension scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;

(c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy requirements prescribed in regulations made by the Secretary of State or the Treasury.

Consumer Rights Act 2015

48 Contracts covered by this Chapter

(1) This Chapter applies to a contract for a trader to supply a service to a consumer.

(2) That does not include a contract of employment or apprenticeship.

(3) In relation to Scotland, this Chapter does not apply to a gratuitous contract.

[[F1](#)(3A)This Chapter does not apply to anything that is governed by Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation ([EC](#)) No [2006/2004](#).]

(4) A contract to which this Chapter applies is referred to in this Part as a “contract to supply a service”.

(5) The Secretary of State may by order made by statutory instrument provide that a provision of this Chapter does not apply in relation to a service of a description specified in the order.

(6) The power in subsection (5) includes power to provide that a provision of this Chapter does not apply in relation to a service of a description specified in the order in the circumstances so specified.

(7) An order under subsection (5) may contain transitional or transitory provision or savings.

(8) No order may be made under subsection (5) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.