

Ombudsman's Determination

Applicant	Mrs S
Scheme	Local Government Pension Scheme (LGPS) – Cambridgeshire Pension Fund
Respondent	LGSS Pension Services (LGSS)

Complaint Summary

Mrs S contends that LGSS, the administrator of the Cambridgeshire Pension Fund, wrongly decided that she is ineligible to transfer her pension rights in the LGPS to another pension provider following the cessation of her pensionable employment on 9 March 2017.

Mrs S complains that:

- she was originally incorrectly led to believe during a telephone conversation in January 2017 by LGSS that the option to transfer would only be available after she had left her employment; and
- LGSS subsequently informed her tardily in June 2017 that it was not possible for her to transfer because she did not meet all the criteria specified in the Pensions Schemes Act 1993 (**PSA 93**) because she had left her job on 9 March 2017 instead of opting out of the LGPS.

Mrs S says that her financial and retirement plans are now “in turmoil” because she cannot access her LGPS pension rights in the way that she wanted.

She is also dissatisfied with how LGSS handled her complaint under the LGPS Internal Dispute Resolution Procedure (**IDRP**).

In order to put matters right, she would like:

- the decision of LGSS rescinded so that she can take her LGPS pension rights in the way which it originally verbally informed her that she could; and
- LGSS to compensate her for the considerable actual financial loss and non-financial injustice which she has suffered as consequence of its mistake.

Summary of the Ombudsman's Determination and reasons

The complaint should be partly upheld against LGSS. The failure of LGSS to (a) include details of all three criteria which Mrs S must meet to be eligible for a transfer on its

website, (b) inform her on a timely basis that she could no longer comply with one of the criteria when it first became aware that she had left her job and (c) consider her complaint properly under IDRPs constituted maladministration which has caused her serious distress and inconvenience, for which she should be suitably compensated, but I find no evidence that LGSS' decision to refuse the transfer was wrong.

Detailed Determination

Material facts

1. On 9 January 2017, Mrs S met with her Independent Financial Adviser (**the IFA**) to discuss the possibility of transferring her pension rights in the LGPS to a pension provider offering an income drawdown arrangement which would allow her greater flexibility on how and when to take her retirement benefits.
2. The IFA says that when he asked Mrs S whether such a transfer was possible, she referred him to the relevant page on the LGSS website showing two eligibility conditions in the LGPS to qualify for a potential transfer which she met, that is:
 - more than two years' pensionable service accrued in the LGPS; and
 - more than 12 months to go before attaining State Retirement Date (**SRD**)
3. On 21 January 2017 Mrs S turned 60.
4. Mrs S subsequently had a telephone conversation with Mr N at LGSS on or around 30 January 2017 who she says was chiefly responsible for dealing with transfers out of the LGPS. She says that her husband, Mr S, was able to participate during this call, and all subsequent ones, with LGSS because they used a speaker phone at home. She asserts that Mr N informed her that if she left her job, she would qualify for a transfer of her pension rights from LGPS since she fulfilled the two criteria specified above. She also says that Mr N asked her to confirm her leaving date.
5. On 9 February Mrs S handed in her notice.
6. Mrs S' IFA was not a fully authorised and regulated pension transfer specialist. He therefore sought the assistance of HDC to assess whether it would be in Mrs S' best financial interests to proceed with a transfer.
7. HDC sent LGSS its letter of authority on 3 March 2017 to show that it was acting on Mrs S' behalf. It requested an immediate retirement quotation for Mrs S and some information about the LGPS necessary to carry out its assessment. LGSS received this request on 7 March 2017.
8. On 9 March 2017 Mrs S left her employment.
9. On 13 March 2017, LGSS sent Mrs S two forms. The first was a transfer out request form, "TVOUT01", which Mrs S says she sent to her IFA for completion and return to LGSS. The second was an estimate request form, "ESTIMATE1" consisting of two parts. This form included a proviso stating that:

“If in any doubt when completing this form, please contact LGSS.”

10. Mrs S completed Part A with her personal and employment details. In Section 4, entitled “Reason for Retirement Estimate Request”, she deleted the words “Leaving” and “proposed” in the question “Leaving. Please give proposed date of retirement” and replaced them with “Left” and “actual” respectively. She specified on the form that her “actual leaving date” was 9 March 2017. By signing the form on 16 March 2017, she authorised:
 - her former employer via EPM, its payroll company, to provide all the information requested in Part B and return it to her as soon as possible; and
 - LGSS, on receipt of the completed form, to supply an estimate of her retirement benefits in the LGPS based on the information available
11. Mrs S says that when she received Part B of the form from EPM duly completed, she sent both parts to LGSS by e-mail on 12 April 2017. A few weeks later, LGSS told her that it had not received this form, so she sent it a copy.
12. LGSS asserts that it was only on receipt of this form on 24 April 2017 that it first become aware Mrs S had left her employment and subsequently asked EPM on 15 May 2017 to provide it with the formal leaving certificate, “LEAVECERT” for Mrs S.
13. Mrs S confirmed in a letter dated 16 May 2017 to Mr N that she had left her job on 9 March 2017 and was now a deferred pensioner in the LGPS. She also said that:

“...it seems I wrongly assumed you would know this from the forms and e-mails I have sent over the past weeks, as well as various conversations with your colleagues in your absence. I also did not know that you...needed a leavers form from EPM...otherwise I could have maybe facilitated this at the time of them completing the 2-part member estimate request form.

Can you therefore now please progress timeously with answering the pack already received from my financial advisers, HDC, as this overall process has already taken 12 weeks from first contacting your department and I am anxiously awaiting HDC’s report and recommendations as to what my near future pension options might be.”
14. LGSS received the “LEAVECERT” from EPM on 25 May 2017. According to Mrs S, when she subsequently requested a further update from LGSS, it told her that it was seeking additional details of her working hours/salary and she pointed out to it that this information was shown on the completed “ESTIMATE1”.
15. On 9 June 2017, LGSS subsequently verbally notified Mrs S that it was not possible for her to transfer her pension rights from the LGPS because it transpired that she did not meet all three qualifying conditions specified in PSA 93 in order to do so.
16. Mrs S complained about this decision. In her letter dated 9 June 2017, she wrote that:

"I first looked at your website back in January this year when I was thinking of retiring and...gave your offices a call, and my husband took part in that call as he has done in all other subsequent calls, as we spoke through a speakerphone here at our home.

I have never received any form of GMP payment or notified it was due in any way, since I retired early on 9 March 2017, nor was I warned of such an important factor and key and serious implications by Mr N when I called your offices late in January 2017. In that call I told him in detail what my plans were subject to what I had read on your website and seen in my pension account file. He confirmed without query that I would, if I wished, be able to transfer out all of my up to date pot value without penalty, as long as the whole thing was managed for me by my appointed financial adviser directly in conjunction with them. My financial adviser also read your website in detail and confirmed it was also as he understood it and there were absolutely no special conditions outlined on the website, that for me would ever prevent such a request...

Back to the call details in January...I asked Mr N what I should do as I hadn't yet handed in my notice to retire, which need to be 4 weeks with my employer...

Mr N said not to worry, he would make a note on my file and "as soon as I had given notice and had an agreed retirement date, to call again and let him know". This I did and subsequently received 2 forms..."

17. LGSS responded in its letter dated 29 June 2017 as follows:

"As a condition of being a contracted-out pension scheme up to 5 April 2016...in relation to your membership between 1 September 1995 and 5 April 1997...there is a requirement to provide a pension at least equal to your Guaranteed Minimum Pension (**GMP**)..."

As required by Section 13 of the PSA 93, the Local Government Pension Scheme Regulations 2013 (**LGPS 2013**) specify when a member is entitled to payment of their GMP, and this is set out in Regulation 51.

The relevant subparagraphs of Regulation 51 in your case are (1) and (2), as...

51. –

(1) Where a member's local government service is contracted out employment and that member has a guaranteed minimum the member is **entitled** from the date of attaining **pensionable age** to payment of a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) But if the member attains **pensionable age** while in local government service the member is not so **entitled** until leaving that employment...

“**Pensionable age**” in this context has the meaning given in section 181 of Part 12 of the PSA 93...

(a) so far as any provisions ...relate to GMPs, means the age of...60 in the case of a woman...

“**Entitled**” in this context is taken to have the same meaning as in Section 165(3) in Chapter 3 of Part 4 of the Finance Act 2004 (**FA 2004**).

(3) For the purposes of this Part, a person becomes entitled to a pension under a registered pension scheme...

(b) ...when the person first acquires an actual (rather than a prospective) right to receive the pension”

Taking this into account, you first acquired an actual right to receive the pension on 10 March 2017 as, at that point you did not have to fulfil any further conditions or take any further actions as the pension was simply payable by virtue of Regulation 51(1) as qualified by subparagraph (2) of the LGPS 2013.

...you attained pensionable age on 21 January 2015 whilst in local government service, and subsequently left your employment on 9 March 2017, there is no provision within Regulation 51 that permits payment to be deferred and therefore from 10 March 2017, i.e. immediately, payment of a pension at a weekly rate equal to no less than your GMP became due.

The fact that the pension has not yet been physically paid does not alter the fact that you have an “actual right”, are therefore entitled to it and it is payable. The question is whether payment of your pension is to be purely at the rate equal to your GMP from 10 March 2017, with the remainder of your pension remaining deferred until a later date, or your pension and any associated lump sum come into payment immediately from 10 March 2017 with an early payment reduction applied. Details of these options are enclosed in a separate letter.

Regulation 96 of the LGPS 2013 defers to the PSA 93 to set the criteria to be met regarding when a member can transfer out and the timescales to be observed. The references are to Chapter 4 or 5 of Part 4 of the PSA 93, however Schedule 4 to the Pension Schemes Act 2015 (**PSA 2015**) amended the 1993 Act so that Chapters 4 and 5 of Part 4 of the Act became Chapters 1 and 2 of a new Part 4ZA.

Chapter 2 of Part 4ZA does not apply as you have relevant accrued rights to benefits under the LGPS, therefore it is all three of the conditions set out in Section 93 in Chapter 1 of Part 4ZA that you would need to satisfy in order to be able to transfer out:

- Condition 1 is that you have accrued rights to any category of benefits under the scheme rules. This is satisfied.

- Condition 3 is that (a) you are no longer accruing rights to benefits in that category, and (b) in the case of benefits that are not flexible benefits, you stopped accruing those rights at least one year before normal pension age. This is satisfied.
- Condition 2 is that no crystallisation event has occurred in relation your accrued rights to benefits in that category. This condition is not satisfied, as becoming entitled to payment of a pension from the LGPS is a benefit crystallisation event (**BCE**) within the terms of Section 216 in Chapter 5 of Part 4 of the FA 2004 and in the context of Condition 2, for the purposes of Section 93(7) payment of the pension has begun.

Whilst Conditions 1 and 3 are satisfied, the fact that Condition 2 is not satisfied means that no transfer is permitted.

From our records and your letter, it is clear that...there was some correspondence and...telephone conversations that took place before you were informed that a transfer of pension rights was not permitted.

I accept that my team should have been able to inform you that a transfer of pension rights was not permitted when the matter was first raised, and I offer my apologies for this...the training issue that has been highlighted is being addressed...and the contents of our website relating to transfers will also be reviewed.

Whilst it is regrettable that you were given incorrect information and I understand your frustration at not being able to transfer in the way you may have wished, however, neither the incorrect information, nor the delays experienced while the necessary details and appropriate leaving notification were obtained from your former employer's payroll provider, have materially affected your ability to transfer your pension rights from the LGPS. This is because, once you attained age 60 on 21 January 2015, from that point forward it would no longer be possible for you to leave your employment in the way you have and transfer your rights from the LGPS, and by your own admission, your consideration of transferring as an option only came about much more recently than this date.

The LGPS is a statutory public sector pension scheme and whilst the legislation that governs it provides for the exercise of discretion by a scheme employer and/or an administering authority in some areas, the matter at issue in your case is not one of them. It is therefore not possible to accede to your request to transfer your rights to an alternative pension arrangement.

...as it has been determined that no transfer of pension rights is permitted in your case, details of your benefit options have been calculated and...are enclosed in a separate letter. The appropriate forms to enable you to inform us of your choice from the available options are also enclosed.”

18. Mrs S disagreed with this decision and informed LGSS that she did not wish to commence payment of retirement benefits in the LGPS until her complaint had been resolved. In her letter dated 23 July 2017, Mrs S said that:

“...I believe Mr N effectively led me into crystallisation by NOT telling me the implications of retiring and by doing so, it would result in me not being able to transfer funds out...he did not advise me that GMP payable at 60 unless still in employment, and then become payable, in other words crystallisation takes place when the person leaves employment/retires. If I had known the implications of this either from your staff or indeed the website...I would have delayed my retirement date until the...transfer was complete.

If your ruling states that by leaving, crystallisation is deemed to have commenced even though no payment(s) have actually been made, then surely ...it can only be seen as fair that you accept that by me advising your staff well in advance of me retiring and that I wish to commence the process to transfer out, and they confirming it can go ahead and send me the forms to proceed, then it should also be deemed as having commenced...

There surely can be no acceptable excuses in my case, nor can the shortcomings of your staff, their lack of training or complete lack of key and accurate information on your website be a credible reason for not acceding my request the consequence of which is a serious impact on my financial planning in retirement. I therefore gracefully request you overturn your earlier decision and progress with the process of me transferring out my pension pot and in the first instance provide my financial adviser with the requested information.”

19. After further exchanges of correspondence, Mrs S invoked Stage One of the LGPS IDRPs on 18 October 2017. LGSS was unable to make its decision at this stage within the prescribed timescales and apologised to Mrs S for its failure.
20. LGSS did not uphold Mrs S' appeal at Stage Two IDRPs and in its decision letter dated 14 June 2018, concluded that:

“Regardless of whether you received correct information or otherwise in January 2017 over the telephone, I do not consider that you have suffered financial loss. Your pension benefits remain intact and you can access GMP on completion of the necessary forms, and indeed the balance of your LGPS benefits at a reduced rate to reflect early retirement should you wish. I accept that you are unable to use those benefits in the way that you wished...

It is not possible unfortunately to allow the pension pot accrued over your pensionable employment to be transferred to another provider at this stage. It is not the case of revoking any decision as such, as the LGPS is a statutory scheme governed by the Acts and regulations...LGSS are obliged to comply with those rules otherwise the scheme is not operated lawfully...

I do accept however that delays have occurred in properly communicating with you and for that reason I direct you be paid the sum of £500 in relation to the distress and inconvenience you have experienced.

For these reasons, your appeal is partially upheld.”

Summary of Mrs S’ position

21. She commenced the transfer process whilst still in employment. No one at LGSS informed her that she should have remained so until the transfer was completed.
22. She was under no pressure to leave her job. If LGSS had brought to her attention that leaving her employment triggered a BCE which would prevent her from transferring, she would have continued working until the transfer was finalised.
23. The LGSS website still only shows two of the three qualifying conditions which must be met in order to qualify for a transfer. It does not show the critical third criterion applying to female members over 60 who had been contracted out of the State Earnings Related Pension Scheme (**SERPS**). If it did, she would not have contacted LGSS to discuss transferring her pension rights in the LGPS.
24. If Mr N and his colleagues at LGSS had been trained properly, they would not have provided her with incorrect information during the telephone calls and she would have ceased her transfer request.
25. She says that:

“Rules are rules is also not an acceptable reason not to revoke the decision, because if this specific ruling about GMP and crystallisation is so important, then why is it not made available on your website and why have your front line staff not been trained on it, especially Mr N ...”

“...he (Mr N) came across as quite knowledgeable and spoke quite eloquently about his knowledge of the scheme and what a relatively quick and easy process the transferring of my pot would be. It was in fact quite a lengthy conversation overall where the forms that needed completing were outlined to me and my husband felt it a worthwhile conversation overall when he said something along the lines of “all you need to do is complete and return the forms we send you, everything else will be taken care of by us. Get us the IFA agreement form signed and completed and that will allow us to proceed in getting all the necessary numbers ready for you when they get in touch. Finally let us know when you know your actual leaving date, so we can proceed immediately after that”

At the time he read out to me and my husband over the phone the two rules of the scheme on transferring out, but countered in saying to do so would in fact have to become a deferred member by leaving my employment, so in fact it was exactly what I wanted to do...

Never ever was it suggested by him...that remaining in employment would still allow me to opt out of the scheme and transfer my pot, but anyway his agreement that I could transfer meant I was in a win/win situation anyway.”

26. When she telephoned LGSS in October 2018, she was told that the staff and, particularly Mr N, had been receiving additional training because of her complaint.
27. Although LGSS has not recorded the telephone calls, her husband took part in each one via speaker phone and everything Mr N and his colleagues said was also heard by him. According to a file note sent to the IFA on 13 February 2017 by Mr S:

“Mrs S handed in her notice last week and leaves school on...9/3/17. Since we last spoke briefly on the subject, we both contacted her current pension provider, LGSS...and had a joint conversation on the speakerphone.

We initially spoke with one of their advisers to explain Mrs S’ situation, after previously e-mailing them, and...then put us through to Mr N who specifically handles the pot transfers. He confirmed that Mrs S does qualify under the criteria of any pot withdrawal must be after at least 2 years’ service and more than 12 months before her state retirement date and must have left her employment through which she pays her contributions.

He also confirmed that if she has a leaving date in place, she can progress with such a pot move now.”
28. By transferring her LGPS pension rights, she could draw as much she wanted, subject to HMRC rules, from her whole pension pot of over £100,000. On her death, either her husband or their two sons could then inherit the residual pot.
29. She had planned to draw income from her pension pot within her annual tax allowance to replace her salary of £12,600 pa until her SRD in January 2021 and “thereafter use the flexi-drawdown facility accordingly subject to tax considerations to supplement further”.
30. If she is not permitted to transfer, she will receive, at best, a tax-free cash sum of around £21,000 and an annuity of approximately £265 per month from the LGPS which is essentially interest on the pension pot that LGPS will retain on her death.
31. During this dispute, her health has deteriorated, and she has had to rely on her husband for financial support through drawing additional income from his pension. She would like to be able to repay these funds to him in the future.
32. She has not found employment again mainly because she was hopeful that given “the life and career changing circumstances” brought about by LGSS revoking its original decision, it would eventually allow her to proceed with the transfer.
33. She has suffered considerable actual financial loss. Since March 2017, she has not received her salary and no pension contributions of £740 pa (employer) and £3,150 pa (employee) have been paid into the LGPS.

34. She says that the “overlying message” which she gets from LGSS’s stance is:

“We have junior untrained staff facing our customers giving potentially wrong but critical information, help and advice about their future plans for their pension fund and retirement and, “Oh, by the way our website is inadequate as it doesn’t cover one of the most critical and key rules which, despite what has happened here we have chosen not to update...and we continue to keep that rule somewhat covert and therefore maintain its apparent secrecy.”

35. She will not be charged by the IFA for the advice which he gave her in relation to the transfer request from the LGPS.

36. It is “absolutely unequivocal that the LGSS are completely in the wrong” and should now be instructed to allow her access to her pension benefits in the way she requested and to which LGSS had originally agreed.

37. In her opinion, the retirement benefits now available to her in the LGPS will not be “actuarially equivalent” to the transfer value which could have been available to her. Having access to her “total pot” by transferring to a pension provider offering a drawdown facility is far more financially advantageous for her than accepting an “annuity type agreement” in the LGPS. She accepts, however, that her “pot value remains constant...under both scenarios”.

38. She also says that:

“The reality is my husband’s pension is his, mine is mine, the money LGSS are holding as my pot is mine and if I don’t ultimately have access to it as requested and agreed to at the outset then I will be severely financially disadvantaged...”

All I ever wanted to do was take advantage of the pension freedoms the Chancellor at the time had made provision for back in 2015. The LGSS however seem intent on not allowing this as they don’t therefore offer a drawdown scheme themselves and would very much appear to have all the barriers in place, covertly or otherwise to prevent members from transferring their respective pots away from their scheme.

I have been fighting now for over 3 years to get the revoking of the LGSS’ original agreement to transfer overturned and this has always been my primary aim, as for me it is all about how I access my pension benefits in the most financially effective way...

After all, as the pension pot is my money...the LGSS would only be giving me what is rightfully mine to move to a pension provider of my own choosing, subject to advice from my IFA.

Had it not been for the LGSS totally wrongful advice at the outset to leave work first to qualify to transfer, and had I been advised to stay at work until the

transfer was completed and then leave, the transfer would have happened anyway...”

39. As a compromise, if LGSS pay her the income payments totalling £35,850 which she would have taken from her pot for the tax years ended 5 April 2018, 2019 and 2020 before arranging for the tax free cash and residual pension available to her from the LGPS, she will be able to repay her husband and still have some financial independence.

Summary of the position of LGSS

40. Section 13 of the PSA 93 sets out provisions for pension schemes that were contracted out of SERPS which must be contained in its rules. These provisions include details of: (a) when entitlement to a minimum pension must be provided, (b) when it must commence and (c) under what circumstances commencement may be postponed.
41. In accordance with Regulation 51(1) of LGPS 2013, Mrs S was entitled to a GMP in the LGPS on attaining her pensionable age for GMP, as defined in PSA 93, of age 60. But under Regulation 51(2), if she attained this pensionable age while in local government service, she was not so entitled to the GMP until leaving that employment.
42. Under Regulation 32(1) of LGPS 2013, any retirement pension which is payable immediately when a member leaves employment begins on the day after the employment ends.
43. When Mrs S terminated her pensionable employment on 9 March 2017. As she did not have the right to postpone payment of her GMP accrued in the LGPS, it therefore became due on the following day.
44. LGPS 2013 addresses the issue of rights to payment of a transfer value in Regulation 96 which defers to the PSA 93 that stipulates three specific conditions which must be met to qualify for a transfer. There is no question that conditions 1 and 3 were met in Mrs S’s case once her active membership of the LGPS ended. The issue is over condition 2 which is set out in Section 93 subsection (3) qualified by subsection (7) as shown below:
- “(3) Condition 2 is that no crystallisation event has occurred in relation to the member’s accrued rights to benefits in that category (see subsection (7))
- (7) For the purposes of Condition 2 a crystallisation event occurs in relation to a member’s accrued rights to benefits in a category when-
- (a) payment of a pension in respect of any of the benefits has begun...”
45. Condition 2 was not met on the basis that immediately on leaving her employment (a) Mrs S became entitled to a GMP (b) there is no provision to enable this entitlement to be withdrawn (c) payment is required to begin on the day after the date on which

employment ended meaning a “crystallisation event” had occurred as defined in subsection (7)(a) of Section 93.

46. As Mrs S failed condition 2, a transfer is not possible and payment of the GMP benefits will be backdated to 10 March 2017, i.e. the date of benefit entitlement.
47. Furthermore, under Regulation 2 of the Contracting-Out (Transfer and Transfer Payment) Regulations 1996, in order to transfer a GMP to a defined contribution arrangement, the member would need to bring himself/herself within the requirements of Regulation 5. In order to do so, Mrs S must show that she has “accrued rights”, being a person who has “rights conferring prospective entitlement” to a GMP, rather than being a person who has “become entitled” to a GMP. Whilst the HMRC position is that for Finance Act 2004 purposes Mrs S would not yet be viewed as having become entitled to her GMP, there is a potentially forceful argument that for GMP purposes and under the LGPS Regulations, she has “become entitled” to a payment of her GMP on leaving employment given the restrictive nature of the postponement provisions around GMPs.
48. Its view therefore remains that no transfer payment can be made in Mrs S’ case. After attaining age 60 on 21 January 2015, it was consequently no longer possible for Mrs S to leave her employment and then transfer her pension rights from the LGPS.
49. A transfer could have proceeded in her case only if she had ceased active membership by opting out of the LGPS and remained in her employment.
50. Mrs S’ allegations about “secret and covert rules” and that there was some sort of conspiracy in preventing her from transferring pension rights are unsubstantiated.
51. Having misunderstood what was said during a telephone call with Mr N in January 2017, regrettably Mrs S chose to end her employment. If she had not “rushed to resign”, then its administrative process in place which included appropriate checks would have identified that if she left her job, transferring her pension rights would no longer be open to her.
52. Mr S informed it in an e-mail dated 26 January 2017 that his wife’s school was about to become an academy and she might be at risk of redundancy. This e-mail also said that:

“In helping us plan under the potential “what ifs”, we might well call the office after having read the FAQs etc to clarify certain aspects and implications of potentially either taking an early pension or even transferring her pot to enable a more flexible access to funds, if in fact she does leave her current employment.

I have just recently done this with my own pension pots and so have a financial advisor.”

This e-mail clearly shows that there was a wider context to Mrs S’ decision to leave her employment.

53. It is possible that Mr N used the term “leave the scheme” during his telephone conversation with Mrs S in January 2017 rather than saying she had to leave her job to qualify for a transfer. Since it does not record telephone calls, it is unable to verify what was discussed and there could have been misunderstanding on what was said by either Mrs S or Mr N.

54. It says that:

“Rushing to resign and leave employment having spoken to a relatively junior member of staff on the telephone without appreciating the consequences of this on a potential transfer, seems an odd choice for Mrs S to make, considering:

- she had completed paperwork for an IFA to obtain information from LGSS relating to her LGPS benefits and a potential transfer quotation while still an active member;
- she had no clear or accurate indication of what the value of any transfer value that might have been available would be; and
- her IFA would presumably not have been in a position to provide advice on the merits or otherwise of transferring without having first received the information they have requested from LGSS...”

55. It was only once the calculation stage in the transfer process had been reached after received the “LEAVECERT” from EPM on 25 May 2017 that the GMP issue was identified in Mrs S’ case.

56. It has not changed its website (until now) to include details of the third criterion because it considers that it is unnecessary to inform “pensioners” who are compelled to receive payment of their GMP such as Mrs S that they do not have an option to transfer their LGPS benefits. Documentation available on its website relating to transfers have been designed to be used by active members of the LGPS only.

57. Information on its website will never cover all eventualities and the relevant legislation applying to the LGPS will always take precedence.

58. It also says that:

“We have attempted at all times to administer the scheme in accordance with our interpretation of the regulations, guidance and overriding legislation governing the scheme. The legislation is particularly complex in this area...

...we accept that administrative failings have been identified that we will seek to learn from. We regret any distress and inconvenience caused...

...we are undertaking a complete review of the relevant sections of our website and associated documentation including adding clear higher-level warnings relating to barriers to transfers....”

Conclusions

59. LGPS is a “public service pension scheme” as defined in the PSA 93 and governed by the Local Government Pension Scheme Regulations (as amended). LGPS 2013 is the version currently in force and it sets out both when Mrs S became entitled to payment of her GMP (regulation 51) and the three criteria which she must meet to qualify for a transfer of her pension rights from the LGPS.
60. In January 2017, the LGSS website which Mrs S and her IFA both consulted, showed that there were only two conditions which she had to meet to be eligible for a transfer. In my view, the reasons which LGSS has given for not showing the third condition are not persuasive. I accept that the information shown on LGSS website cannot be expected to cover everything mentioned in the relevant legislation applying to the LGPS. But without the missing third criterion, in my opinion, Mrs S and her IFA were not supplied with crucial information warning them of what she could not do if she wished to proceed with the transfer.
61. If this information had not been missing, I am satisfied that Mrs S and her IFA should then reasonably have known that she had to leave the LGPS but remain in employment in order to qualify for a transfer.
62. Furthermore, including this criterion on its website would have made it readily available for reference to LGSS staff when dealing with member enquiries. I consider the failure of LGSS to include details of the third criterion on its website was therefore maladministration on its part.
63. I turn now to the issue of what Mrs S was told directly by staff of LGSS. Mrs S contends that she was misled by Mr N into believing that she had to leave work before she could transfer out, that she only handed her notice in and left work because of this belief, and that she would have stayed on and resolved the transfer issue if she had been given the correct information about the conditions attaching to her right to transfer. Mr and Mrs S’ recollection of what Mr N told them was recorded in a note to the IFA made not long after the call. Their recollection is consistent with Mrs S’ subsequent conduct. I have seen no evidence which suggests an alternative reason for Mrs S’ resignation or which otherwise casts doubt on their account and I accept it as correct.
64. However, the benefit which Mrs S is entitled to remains actuarially equivalent to the transfer value which she could have taken. She cannot demonstrate a financial loss arising from the inability to access the transfer value. I note that Mrs S accepts that the value of her retirement benefits will be the same, that is, the value of “her pot”, regardless of whether she takes them from an income drawdown plan or from the LGPS. The reasons which Mrs S has given for disagreeing with my conclusion only therefore demonstrates that she will experience a significant loss of flexibility which will be difficult to put a value on, by not being allowed to transfer.
65. The result of the misinformation is that Mrs S will have wasted a considerable amount of her time trying to obtain an IFA report after the date on which it was not technically

possible for her to take the transfer. I consider that the provision of misleading information was clearly maladministration on the part of LGSS.

66. LGSS also took longer than was necessary to inform Mrs S that she could not meet the transfer criteria. It received the completed "ESTIMATE1" form on 24 April 2017. At this point, LGSS was definitely on notice that Mrs S could not meet the third criterion to qualify for a transfer. It could have notified her of this much earlier than 9 June 2017.
67. Mrs S also complains that LGSS failed to deal with her complaint under IDRPs properly. LGSS do not dispute this and have already awarded her £500 in recognition of this.
68. Whilst I fully appreciate Mrs S' points of view on this matter, overall, I consider that the maladministration identified above has caused Mrs S serious non-financial injustice because she has been unable to draw her retirement income according to her preferences and mistakes were not corrected at the earliest opportunity. However, because the benefit she will receive will be actuarially equivalent to the value she would have been permitted to transfer out, she cannot prove actual financial loss. To clarify my reasoning at this point, I do not agree with Mrs S' view that LGSS will keep her pot and pay her an annuity out of interest only. That is not the way that a defined benefit scheme works. Rather, the value which she would have been able to take on transfer out would be calculated based on the cost of providing her defined benefit pension over the lifetime that it was expected to be in payment.
69. My awards for distress and inconvenience are modest and not intended to punish the party directed to pay. In this case, I consider an award of £1,000 is justified.
70. Therefore, I partly uphold Mrs S' complaint to the extent that she has suffered severe distress and inconvenience and make the appropriate directions below to remedy this injustice.

Directions

71. Within 28 days of the date of this Determination, LGSS shall arrange to pay Mrs S £1,000 inclusive of the £500 already offered in recognition of the serious distress and inconvenience caused to her by the maladministration identified.
72. On receipt of Mrs S' instructions on how she would like to take the retirement benefits now available to her in the LGPS, LGSS should comply with them without undue delay.

Karen Johnston

Deputy Pensions Ombudsman
3 June 2020