

Ombudsman's Determination

| | |
|-------------|---|
| Applicant | Mrs S |
| Scheme | The Local Government Pension Scheme (the Scheme) |
| Respondents | Essex County Council Pension Fund (the Fund) |

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by the Fund.

Complaint summary

2. Mrs S has complained that: -
 - She cannot take a cash equivalent transfer value (**CETV**) despite receiving a CETV illustration.
 - She was sent a pension statement in 2016, quoting a higher pension than she was entitled to.

Background information, including submissions from the parties

3. Mrs S had two periods of service during which she was a member of the Scheme: -
 - From 29 June 1992 to 31 August 2012, she was employed by a Primary Academy (**the Academy**).
 - From 1 September 2012 to 2 November 2014, she was employed by Essex County Council (**ECC**).
4. Mrs S' Normal Retirement Date (**NRD**) under the Scheme was 24 December 2019, her 65th birthday. The Scheme was required to pay her a Guaranteed Minimum Pension (**GMP**) from 24 December 2014, her 60th birthday. A GMP is the minimum pension which a salary related occupational pension scheme must provide to members who were contracted out of the State Earnings Related Pension Scheme.
5. On 21 October 2014, the Fund administrator told Mrs S that a GMP of £216.84 was payable immediately from 24 December 2014, for her service with the Academy. She had the option to receive the remainder of her benefits in December 2014, as a

reduced annual pension of £5,811.56, and a lump sum of £12,731.62. Mrs S did not respond to the Fund administrator.

6. In March 2015, the Fund administrator sent Mrs S a CETV illustration regarding her service with ECC.
7. On 16 March 2015, the Fund administrator sent Mrs S a reminder that the GMP was payable regarding her service with the Academy, and her pension from December 2014 was £5,811.56 per annum, and a lump sum of £12,731.62. Mrs S did not respond to the Fund administrator.
8. On 12 August 2015, the Fund administrator sent Mrs S an illustration for a reduced annual pension of £824.12, regarding her service with ECC. This confirmed that if she did not reply within two months then her pension would be deferred.
9. On 8 January 2016, the Fund administrator sent Mrs S a reminder that the GMP was payable regarding her employment with the Academy; her pension from December 2014 was £5,811.56 per annum, and a lump sum of £12,731.62.
10. On 25 January 2016, Mrs S returned the completed retirement form confirming that she wished to receive payment of her GMP and defer the payment of her full pension benefits regarding her service with the Academy.
11. On 3 June 2016, the Fund administrator confirmed the GMP of £215.76 per annum (£17.98 per month) had been set up, and arrears of £308.96 due from December 2014, had been paid.
12. On 30 August 2016, the Fund administrator wrote to Mrs S about her service with the Academy saying, "You currently receive a gross monthly payment of £11,275.68 which is the value of your Guaranteed Minimum Pension (GMP) entitlement." The statement attached to the letter said from 30 September 2016, Mrs S could receive an annual pension of £12,578.31 and a lump sum of £13,497.57.
13. On 21 September 2016, the Fund administrator provided a further statement which confirmed the correct pension. This said from 30 September 2016, that Mrs S could receive an annual pension of £6,398.73 and a lump sum of £13,497.57 regarding her service with the Academy.
14. Mrs S phoned the Fund administrator about the two different statements.
15. On 4 October 2016, the Fund administrator wrote to Mrs S apologising for the level of service and confirming, "I would like to reassure you the information sent to you ... on 21 September enclosing a revised benefits statement is correct."
16. On 8 November 2016, a CETV illustration for £18,376.81 was sent to Mrs S regarding her service with ECC.
17. On 9 November 2016, Mrs S emailed the Fund administrator chasing for the CETV illustrations for both of her periods of service.

18. On 10 November 2016, the Fund administrator confirmed that a CETV illustration had been provided on 8 November 2016, relating to Mrs S' service with ECC. Regarding her service with the Academy, the letter said: -

"I am afraid it is not possible to calculate and subsequently pay a CETV if the pension (or proportion of your pension) is already in payment. As an element of your pension is being paid I am unable to provide you with a CETV for this particular pension record".

19. On 25 November 2016, following a review of its records the Fund administrator wrote to Mrs S and confirmed the amount shown in the CETV illustration sent on 8 November 2016, regarding her service with ECC was correct, but the previous CETV illustration issued in 2015 was incorrect. It should have been £17,763 instead of £20,882. The letter also said: -

"In terms of the CETV relating to your pension record, regrettably you are not able to transfer this to another arrangement because a proportion of this pension is already in payment. I am sorry our previous correspondence gave the impression you were able to do this."

20. On 22 February 2017, Mrs S submitted a letter of authority to allow the Fund administrator to release information to her financial adviser (**the IFA**).

21. On 28 February 2017, the Fund administrator confirmed to the IFA that Mrs S was unable to take the CETV, as the GMP was in payment, and acknowledged this had not been made clear in previous correspondence. Mrs S could take her pension benefits regarding her service with the Academy from October 2016, without reduction, and from ECC immediately, but on a reduced basis.

22. Mrs S complained on 3 September 2018, saying that: -

- The GMP was not worth having as it was taxed, but she was told she had to take it.
- She was assured the annual pension £12,578.31, in relation to her service with the Academy, was correct.
- She was given a total CETV illustration for both her pensions in 2015, and when she asked for an up to date one in November 2017, she was told she could no longer transfer as her GMP was in payment.

23. On 13 September 2018, the Fund administrator responded: -

- Apologising for the over-stated pension figures.
- Offering £250, as a gesture of good will for the inconvenience Mrs S had experienced. If Mrs S did not accept the offer, then her complaint would be looked at under the Internal Dispute Resolution Procedure (**IDRP**).

- Providing forms to allow Mrs S to back-date her pension to 1 October 2016, regarding the service with the Academy; arrears would be payable from that date, plus interest.

24. In January 2019, the administrator of the Scheme replied under Stage One of the IDRPs saying: -

- The regulations that apply are the Local Government Pension Scheme (Administration) Regulations 2008 (**the Regulations**) and Pensions Scheme Act 1993 (**the Act**).
- As Mrs S was not in local government employment the Fund administrator correctly stated that the GMP was payable from 24 December 2014.
- It was correct to pay the GMP and prohibit the outward transfer of pension rights.
- It acknowledged that the wrong information was issued on 30 August 2016. However, the correct information was provided on 21 September 2016, with an apology.
- The CETV illustration was calculated incorrectly on 25 March 2015, and the amount was corrected in November 2016, when Mrs S was not permitted to transfer any of her pension rights.

25. On 30 May 2019, the Fund administrator replied under Stage Two of the IDRPs saying: -

- On 24 December 2014, as Mrs S was no longer working in local government employment, there was no option but to pay her the GMP.
- Section 93 of the Act said a person is only entitled to receive a CETV if no part of the pension has gone into payment. This meant Mrs S could not transfer her pension benefits out of the Scheme after age 60 because the GMP had gone into payment.
- On 30 May 2019, the Fund administrator repeated the position and said when errors occurred, they were always promptly corrected, and an apology given. Mrs S had not lost out or suffered any disadvantage as a result of incorrect information being provided.

Adjudicator's Opinion

26. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further was required by the Fund. The Adjudicator's findings are summarised below: -

- The incorrect benefit quotation did not automatically entitle Mrs S to that level of pension, as the pension that is paid should be in line with the Scheme rules.

- Whilst an incorrect annual pension figure of £12,578.31 was shown on the statement issued in August 2016 a revised statement showing the correct lower pension of £6,398.73 was issued shortly thereafter, on 21 September 2016.
 - The Fund administrator told Mrs S on 4 October 2016, that the statement issued in September 2016, was correct. Therefore, it was not reasonable for Mrs S to continue to believe that she would receive the higher pension quoted in August 2016.
 - An incorrect CETV illustration was issued in March 2015, regarding Mrs S' service with ECC, but as Mrs S did not then proceed with pursuing the option of the CETV at that time she had not lost out financially.
 - As the GMP was being paid to Mrs S, the Fund administrator was correct that a CETV was no longer available to her.
 - The Fund's offer to pay £250, as a gesture of good will, was reasonable.
27. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome.
28. Mrs S says: -
- She suffered a huge amount of distress, disappointment, anxiety and anger. She therefore considered that the £250 offered by the Fund was an "insult".
 - She was given the wrong information on more than one occasion as she also dealt with the Fund administrator over the telephone.
 - She had received various apologies and considered what happened was unfair and distressing.
29. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mrs S for completeness.

Ombudsman's decision

30. Mrs S has argued that she was left with the impression that she would receive a higher annual pension and was assured this was correct on more than one occasion. An incorrect benefit quotation does not automatically entitle Mrs S to the level of pension benefits quoted. The Scheme is not bound to follow incorrect information as a member is only entitled to receive the benefits provided for under the scheme rules or regulations. For redress to be provided there needs to be evidence that there was direct reliance on the misstatement, that it was reasonable to do so and that it resulted in an irreversible loss.
31. There is no dispute that Mrs S was issued with a statement showing a higher annual pension than that to which she was entitled in August 2016, the figures in the August statement were wildly inaccurate. However, Mrs S was provided with a correct

statement shortly afterwards, in September 2016. The Fund administrator also assured Mrs S, on 4 October 2016, that the lower pension shown on the statement issued in September 2016, was correct.

32. I appreciate Mrs S was disappointed to learn that her pension will be lower than she had been told. However, she was advised of the correct position within a matter of weeks and I do not find it was reasonable for Mrs S to continue to believe she would receive the higher amount. Also, there is no evidence that Mrs S took any action in reliance on the incorrect information.
33. Mrs S has also complained that she was provided with an incorrect CETV quotation in March 2015. Whilst the provision of incorrect information is maladministration, as Mrs S did not then proceed and request a CETV at that time, she cannot now claim that she suffered a financial loss as a result of the incorrect information.
34. I appreciate that Mrs S is disappointed that she was given incorrect information and she remains unhappy about what has happened. However, the matter was rectified reasonably quickly, and an apology given. I find the amount of £250 offered by the Fund in recognition of its errors is reasonable. Mrs S should contact the Fund if she wishes to accept its offer
35. I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
30 March 2020