

## Ombudsman's Determination

Applicant	Mr I
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondent	London Borough of Sutton ( <b>the Council</b> )

## Outcome

1. I do not uphold Mr I's complaint and no further action is required by the Council.

## Complaint summary

2. Mr I's complaint is two-fold. First, he has complained about the delays in providing him with a cash equivalent transfer value (**CETV**) illustration. Second, he has complained that he was unable to transfer his benefits from the Scheme, as he was within a year of his normal retirement date (**NRD**).

Mr I would like to proceed with the transfer based on the CETV illustration he received in July 2018.

## Background information, including submissions from the parties

3. Mr I is a deferred member of the Scheme and his NRD was 18 August 2019. In August 2016, his financial adviser (**the IFA**) requested a CETV illustration from the Council. The Council said that it would be provided within a few weeks.
4. During September and October 2016, the IFA contacted the Council for updates as it had not received the CETV illustration. The Council responded stating that it was currently unable to provide a CETV illustration as new transfer factors were being implemented.
5. In December 2016, the Council informed the IFA that it was waiting for some information from Her Majesty's Revenue & Customs (**HMRC**) about Mr I's guaranteed minimum pension (**GMP**).
6. On 4 May 2017, Mr I's previous employer provided the Council with information about Mr I's GMP. The Council sent the IFA a CETV illustration of Mr I's benefits on the same day. However, it was identified that there was conflicting information about Mr I's date of birth (**DOB**) and therefore the CETV calculations had to be reviewed.

7. Further correspondence, from August 2017 to April 2018, showed that the Council was in contact with Mr I's previous employer, regarding the transfer of his GMP and confirmation of Mr I's DOB. On 10 April 2018, the previous employer informed the Council that it had advised HMRC of the GMP transfer liability. Having received the further information, on 17 April 2018, the Council sent the IFA a second CETV illustration.
8. On 18 July 2018, the IFA contacted the Council regarding Mr I transferring his benefits out of the Scheme. As the April 2018 CETV illustration was out of date, a new one was requested.
9. The new CETV illustration was sent on 23 July 2018. The information sent with it stated that members could not transfer out if they were within 12 months of their normal retirement age of 65. On the same day, Mr I contacted the Council and asked how long the CETV illustration was guaranteed. In response, the Council said:-

"It is normally guaranteed for 3 months, please see below [sic]

You cannot transfer your benefits (other than AVCs) if you leave less than one year before your Normal Pension Age. An option to transfer (other than in respect of AVCs) must be made at least 12 months before your Normal Pension Age."
10. On 18 August 2018, Mr I reached age 64.
11. On 20 August 2018, the IFA contacted the Council as Mr I had decided he wanted to proceed with the transfer. The IFA was told that as Mr I was within the 12 months of his NRD he was not able to transfer his benefits from the Scheme.
12. Mr I complained to the Council. His complaint was considered under both stages of the Scheme's internal dispute resolution procedure (**IDRP**).
13. In the IDRP responses, sent in December 2018 and April 2019, the Council explained that:-
  - The main reason for the delay was the lack of information it held regarding Mr I's GMP. It had requested this from HMRC on 1 December 2016. There had also been issues with confirming Mr I's DOB.
  - The Council had been in contact with Mr I's previous employer regarding both issues and as these factors were beyond its control it was unable to offer any compensation.
  - The Scheme Regulations do not allow the Council to pay a CETV as Mr I is within 12 months of his NRD. It had made the restriction on transferring clear to Mr I in its email of 23 July 2018.
  - The Council could not exercise its discretion to allow Mr I to complete the transfer.

## **Adjudicator's Opinion**

14. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised below:-

- The reasons for the delays in providing Mr I with a CETV illustration were out of the Council's control.
- The three main reasons for the delay were: (1) the transfer factors being updated at the time that Mr I requested a CETV illustration in August 2016; (2) the information HMRC held in relation to the transfer of his GMP; and (3) the inconsistencies with Mr I's DOB.
- The Council had provided the CETV illustration in a timely manner once it had received confirmation of Mr I's DOB and that his GMP liability had been transferred.
- The Scheme had made it clear to Mr I that the Regulations would not allow him to transfer out of the Scheme if he was within one year of his NRD.
- Mr I was given sufficient time between receiving the second CETV illustration and his 64<sup>th</sup> birthday to have sought further clarification from the Council about the transfer regulations and to have proceeded with the transfer.

15. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I 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 points made by Mr I for completeness.

16. Mr I has made the following comments:

- the Regulations do not stop the Council from using its discretion to allow the payment of his transfer; and
- if there is no discretion or statutory right to a transfer, his human rights have been discriminated on the grounds of age.

## **Ombudsman's decision**

17. Mr I's argues that the Council should use its discretion to allow him to transfer out of the Scheme and that the Regulations do not stop the Council from doing so. The Regulations state that Mr I only has the right to transfer up to one year before attaining NRD, not subsequently. The Regulations do not give the Council discretionary powers to allow members to transfer out of the Scheme if they are within one year of their NRD. The Council has acted in accordance with the Scheme's governing Regulations and there is no evidence of maladministration.

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18. Mr I said that, if it is right that there is no discretion or statutory right to a transfer, his human rights have been discriminated on the grounds of age. I do not agree as this does not come within the European Convention on Human Rights.
19. I do not uphold Mr I's complaint.

**Anthony Arter**

Pensions Ombudsman  
24 April 2020

## **Appendix**

### **The Local Government Pension Scheme (Administration) Regulations 2008**

#### Part 9 Interpretation of Part

77. In this Part –

“the 1993 Act” means the Pension Schemes Act 1993 (1)

“Chapters 4 and 5” means Chapters 4 and 5 of Part 4 of that Act (transfer values and early leavers);

#### Rights to payment out of a fund authority’s pension fund

79. (1) A member may apply for a transfer under Chapter 4 or 5 ...

### **Pension Schemes Act 1993**

#### Part 4 Chapter 4 Section 95 Ways of taking right to cash equivalent

(7) A member of an occupational pension scheme may only exercise the right conferred by this section on or before the last option date.

(8) In subsection (7) “the last option date” means, subject to regulations under section 98, the date which falls—

(a) one year before the date on which the member attains normal pension age; or

(b) six months after the termination date,

whichever is the later.