

Ombudsman's Determination

Applicant	Mr N
Scheme	Kent Messenger Pension and Life Assurance Scheme (the Scheme)
Respondent	First Actuarial LLP (FA)

Outcome

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

Complaint summary

2. Mr N complained that FA failed to let him know, in a timely manner, that he could transfer his benefits from the Scheme. Mr N wanted to be in the same financial position that he would have been in had he transferred his benefits on retirement.

Background information, including submissions from the parties

3. Mr N had a deferred pension due to be paid at a later date. His intended retirement date was 18 April 2019.
4. In June 2013, the Trustee of the Scheme (**the Trustee**), provided details of the Scheme's Schedule of Contributions and Recovery Plan (**the Plan**) to its members. The objective was to clear the Scheme's funding deficit. The Trustee said that if the Plan failed, the Scheme would have to apply to be taken over by the Pension Protection Fund (the **PPF**). It said that the "PPF levels of pension and increases are not as generous as the Scheme".
5. The Plan set out a contribution free period ending in June 2016. Mr N intended to contact the Scheme in 2015, with an aim to safeguard his benefits.
6. In November 2015, Mr N called FA requesting details of the options available to him. As a result of the phone call, FA agreed to send him three retirement illustrations for April 2016, 2018 and 2019.
7. The Scheme issued a Summary Funding Statement (**SFS**) to all its members in December 2015, which included information regarding transfers. It said, "if you need anything further, please contact the Scheme Administrator".

8. On 23 December 2015, Mr N called FA for an update on his request for the three retirement illustrations. FA said that the delay was due to incorrect data following the handover from the Scheme's previous administrator.
9. On 13 January 2016, FA sent Mr N retirement illustrations for March 2016 and April 2016. FA noted that, with effect from 6 April 2016, the Lifetime Allowance (**LTA**) was reducing to £1 million. As a result, Mr N would incur a tax charge if his benefits were brought into payment after this date. So, it wanted to make Mr N aware of the potential tax implications.
10. Upon receipt of the LTA information, Mr N requested a final retirement illustration for 15 March 2016 (**March 2016 Illustration**). This was the only illustration that included the option of transferring his benefits. Having reviewed this information with his financial advisor, he contacted FA asking if a transfer quotation was something it could easily provide.
11. FA responded on the same day stating it would take 10 working days to provide a full transfer pack, and that Mr N would need to request this.
12. Mr N completed his retirement forms and FA set up his retirement benefits on 21 March 2016.
13. The Scheme entered the PPF assessment period in April 2017.
14. In August 2017, Mr N complained to FA. He said:-
 - FA had not acted in his best interests.
 - He was not informed of the right to transfer from the outset.
 - FA was slow to provide him with information.
 - The transfer option was only provided four working days before his retirement date.
 - He had not received his pension increase.
15. In response, FA said:-
 - It was not a financial advisor so it could not advise on the best course of action for individual members.
 - The correspondence sent to Mr N stressed the need for independent financial advice before making any decisions. This was evident in the correspondence sent on 16 and 24 February 2016, and the March 2016 Illustration.
 - It had no legal duty to provide Mr N with information about the transfer option in the retirement illustrations.
 - Mr N should have been aware of the option to transfer, as it was mentioned in the scheme booklet, the SFS, and the March 2016 Illustration. In addition, the

Trustee had a legal duty to inform Mr N of his rights and options when he became a deferred member of the Scheme. So, the option to transfer was also noted at that point.

- Since 2013, the Trustee had been reducing transfer values by 35% to reflect the Scheme's deficit. Mr N's transfer value would have been in excess of £1.5 million, so it would have been reduced by approximately £500,000 to £600,000.
 - It accepted that the retirement illustrations, requested in November 2015, were not sent within the service levels it adheres to.
 - Prior to the Scheme entering the PPF assessment period, Mr N's pension would have received the agreed 5% increase. Under PPF compensation rules, only post 5 April 1997 benefits will increase in line with consumer prices index capped at 2.5%.
 - It offered £250 for the distress and inconvenience caused by its delay in responding to the retirement illustrations requested in November 2015.
16. Mr N raised a further complaint on 25 May 2018. He said it seemed strange that the Trustee and FA did not have to inform him of the transfer option. He wanted evidence of the reduced pension transfer values, as he thought transferring his benefits would have been the better option for him. He rejected the £250 offer.
17. On 25 June 2018, FA responded saying that the Trustee was only required to inform members of a reduction to a transfer value when a transfer value quotation was sent to a member. The evidence explaining the reduction in the transfer values could not be shared as it contained sensitive information. FA later sent a redacted version of the minutes from the meeting where the transfer value reductions were discussed.
18. Mr N raised an additional query in July 2018. He wanted confirmation of the reduction percentage applied to completed transfers. FA said all transfers in excess of £30,000 were reduced by 35%.
19. In July 2018, the new administrator of the Scheme informed Mr N that his retirement benefits had been understated, so his pension would be increasing. Having questioned this with FA, it said it had calculated Mr N's benefits in accordance with the Scheme Rules. FA could not comment unless it had a copy of the calculation from the new administrator.

Mr N's position

20. Mr N raised the following questions:-

- Why was the option to transfer included in the March 2016 Illustration and not the earlier illustrations?
- Was the transfer option not provided due to the size of Mr N's transfer value?

21. Mr N would have received the Scheme booklet over 40 years ago and the leaver statement over 20 years ago. So, it is unlikely that he would have remembered that these documents contained the transfer out option.

22. Mr N chose to retire on 15 March 2016, as this was the day before the Chancellor announced the 2016 Budget. He was worried there might have been "an immediate tax grab on pensions".

23. Mr N did not receive the SFS. However, Mr N had since read this and did not believe this mentioned the transfer option.

24. The redacted minutes of the Trustee meeting did not have a date on when the transfer reduction was going to come into effect.

FA's Position

25. FA reviewed the calculation from the new administrator. It said that FA had correctly revalued Mr N's benefits from his date of leaving to his retirement date. The new calculation incorrectly added an additional three years to Mr N's normal retirement date. The Scheme's actuary confirmed that the early retirement factor should be applied to the actual retirement date, not the normal retirement date. This is why there was a discrepancy in calculations, and why Mr N's pension was now overstated.

26. The Scheme's 'Review of Actuarial Factors October 2012' said that, "the current early retirement factor is applied to the pension at date of leaving revalued to the actual date of early retirement."

Adjudicator's Opinion

27. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by FA. The Adjudicator's findings are summarised below:-

- Mr N complained about FA's failure to inform him of the transfer option in a timely manner. While pension scheme members who have left pensionable service must be told their rights and options on leaving service, there is no legal duty, under the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, for the Scheme to inform (or remind) Mr N of his rights and options at any other time. It puts the responsibility on members to

request a transfer value. For this reason, the Adjudicator did not consider that this part of the complaint could be upheld.

- Further, the option to transfer was noted on other sources of information. Namely, the March 2016 Illustration, the SFS and Scheme booklet. It is reasonable to expect that Mr N had access to these. Mr N said that he received the Scheme booklet over 40 years ago. While the Adjudicator appreciated that Mr N may not remember the Scheme booklet's contents, in the SFS, the Trustee said that a Scheme booklet was available upon request.
- Mr N said that the SFS did not include the transfer option. The Adjudicator agreed that the option was not explicitly listed in the SFS. However, it did provide information on the transfer process. Mr N was also given the option to raise any questions with FA, so it is reasonable to assume that FA would have answered questions about the transfer process.
- Mr N said that the March 2016 Illustration was the first time the transfer option was mentioned. Mr N argues that had the earlier illustrations listed this option, he would have had more time to explore it. While the Adjudicator agreed with Mr N, it was the Adjudicator's view that FA did not have a legal requirement to provide the option. So, it had not done anything wrong by omitting it in the earlier illustrations.
- Mr N also complains that FA did not act in his best interests. In the Adjudicator's view, FA acted in the best interests of Mr N, as it warned him of the potential tax charges due to the change in LTA. FA also advised Mr N to seek independent financial advice on numerous occasions. In the Adjudicator's opinion, it is reasonable to assume that had Mr N contacted a financial advisor, they would have discussed the option of transferring Mr N's benefits. In doing so, Mr N may have had sufficient time to consider transferring his benefits.
- Mr N requested three retirement illustrations in November 2015, but did not receive these until January 2016. FA has agreed that it did not adhere to its service level agreements and that it should have kept Mr N updated on his request. The Adjudicator agreed with this aspect of Mr N's complaint and took the view that FA's offer of £250 for the distress and inconvenience caused was sufficient in the circumstances.
- The new administrator of the Scheme informed Mr N that his retirement benefits had been incorrectly calculated. As a result, his pension would be increasing. FA reviewed the calculation and provided evidence why its calculation was correct. As the new administrator is not a party to the complaint, the Adjudicator did not review or comment on its position, or assess this aspect of the complaint.

28. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

29. Mr N provided his further comments which do not change the outcome. Mr N said:-

- When FA took over the administration of the Scheme in 2015, it had to retain as much money in the Scheme as possible. FA would not have been enthusiastic about him transferring over £1 million out of the Scheme and would not have been in a hurry to tell him that he could.
- There is a lack of transparency with the information administrators are required to give members. Members asking for their options from the scheme are requesting, facts not advice; and not being told of the option to transfer out means they decide what to do based on incomplete information.
- The Pensions Advisory Service (**TPAS**) says that he should have received a statement of his options within two months of his chosen retirement date.
- How is an average scheme member supposed to know about the right to transfer his benefits? He maintains his position that FA did not act in his best interests. Further, there were numerous delays from November 2015 and February 2016.
- He could not see where on the SFS it states, "if you need anything further, please contact the Scheme Administrator".
- At no time was he consulting with a financial advisor. He said this as he thought it would prompt a better response from FA.
- The 1 April 2017 annual pension increase was not applied to his pension benefits. The Scheme documentation states that his pension should increase by 5% annually on that date. As the Scheme had not entered the PPF assessment period on that date, FA's actions in withholding the increase was an attempt to retain more funds in the Scheme.

30. In response to Mr N's point that FA did not increase his pension on 1 April 2017, FA confirmed that it should have applied an increase. However, it noted that the new administrator had increased Mr N's pension and backdated this to 1 April 2017. As a result, FA do not consider that Mr N has suffered a financial loss due to its error. It increased its offer to £500 for the distress and inconvenience caused.

31. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

32. Mr N has expressed his views on the motivation of FA and how it affected the information it chose to provide to him. He has also pointed to a lack of transparency around the options available to members. While I appreciate Mr N's concerns, my role is to consider FA's actions and determine whether they amount to maladministration.

33. Mr N has referred to guidance from TPAS in support of his position that FA did not provide him with information in a timely manner. While TPAS confirms that members approaching their retirement date should be sent a retirement illustration outlining the options available, the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, does not compel administrators to include information on transfer out options. So, I do not find that FA made an error in this respect.
34. I consider that Mr N had opportunities to learn about the transfer option. Given the importance of pension savings, it is expected that members will review information about their benefits. I find that Mr N was provided with opportunities to explore the transfer option prior to FA listing the option in the March 2016 Illustration. With regard to the SFS, it explains part of the transfer process, and the final paragraph states that further information can be requested from the administrator; including a scheme booklet. Although, Mr N says he did not see this on the SFS, it does not negate the fact that it was there.
35. On 24 February 2016, Mr N confirmed that he was going to review the information he received with advisors. On 9 March 2016, Mr N enquired whether a transfer value could be provided, as his financial advisor had raised the question. So, despite Mr N stating that he did not have a financial advisor, his communications with FA suggest differently. A financial advisor should be aware of the right to transfer. So, I find it reasonable to assume that had Mr N discussed his pension provision with a financial adviser he would have known about this option in a timely manner.
36. The calculation provided by the new administrator confirmed that a backdated pension increase was applied to Mr N's benefits from 1 April 2017. So, I agree that Mr N has not suffered a financial loss. In the circumstances, FA's recent decision to increase its offer to £500, for the significant distress and inconvenience caused to Mr N, is sufficient redress. Mr N should contact FA if he wishes to accept its offer.
37. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
31 March 2020