

Ombudsman's Determination

Applicant	Mrs Angela Winstanley
Scheme	Local Government Pension Scheme (the Scheme)
Respondent(s)	The National Autistic Society (the Society)

Complaint summary

Mrs Winstanley's complaint which is against the Society is about the delay in providing her with a transfer value of her benefits from the Scheme.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the Society because they were not responsible for the delay in Mrs Winstanley receiving a transfer value from the Scheme.

DETAILED DETERMINATION

Material Facts

1. Mrs Winstanley was an employee of the Society and a member of the Scheme until 30 April 2011. At the time she left she was 57 years old.
2. Mrs Winstanley was being advised by Create Financial Management (the **CFM**) as to whether she should take her benefits early from the Scheme immediately on leaving or take a transfer value to a personal pension arrangement.
3. In January, February and June 2011 the London Pension Fund Authority (the **Authority**), the administrators of the Scheme at the time, wrote to CFM with estimates of her retirement benefits based on a leaving service dates of 18 March 2016 and 30 April 2011, but payable from 19 March 2016 (her 62nd birthday). On 18 February and 1 June 2011 the Authority also provided CFM with transfer value quotes, based on leaving service as at 18 February 2011 and 18 March 2016, (which are the dates the letters were issued) which were £201,228.90 and £224,823.81, respectively. Both transfer value quotes were said to be guaranteed for three months.
4. On 24 June 2011 CFM sent the Society a letter of authority from Mrs Winstanley and said that they looked forward to receiving the information from the Authority which they had requested.
5. Under the Scheme members can retire at age 60 and receive their full pension from the Scheme. However, between the ages of 55 and 60 the employer's consent is needed before a member can take their pension.
6. On 12 August 2011 the Society confirmed to CFM, by email, their consent for Mrs Winstanley to take her benefits immediately from the Scheme. The Society asked for confirmation from Mrs Winstanley as to how she would like to proceed. There was no response from Mrs Winstanley or CFM. Mrs Winstanley says that neither she nor CFM received this confirmation.
7. The Society sent a completed leavers form to the Authority confirming that she was retiring early.

8. On 1 September 2011 the Authority provided Mrs Winstanley with details of the early retirement benefits payable to her as from 1 May 2011. The information provided showed that she could have a pension of £8,495.19 per annum and a lump sum of £22,937.22 or a pension of £6,689.98 per annum and a lump sum of £44,599.74. The pension would increase in line with the Consumers Price Index (CPI) when in payment.
9. From October 2011 until January 2012, in accordance with guidelines issued by the Government Actuary's Department (GAD) - the actuaries to the Scheme, all transfers from the Scheme were suspended.
10. The administrators for the Scheme changed. In November 2011 the new administrators, Capita Hartshead (Capita), informed Mrs Winstanley that as she had left service on early retirement grounds, under the regulations, she was unable to transfer her benefits. Therefore her only option was to take her retirement benefits.
11. Throughout December 2011 CFM continued to correspond with both Capita and the Society. In order to provide a transfer value quote, Capita wanted a revised leaver form changing the grounds on which she left service. However, because of the GAD guidelines they would not be able to provide accurate transfer value figures and any quotes they provide would not be guaranteed.
12. The Society said that they had submitted a leaver form on the grounds of "early retirement" because CFM wanted details of Mrs Winstanley's early retirement benefits. They said that the Authority would not issue this information without a completed leaver form stating the reason for leaving.
13. CFM was concerned that submitting a revised leaver form to obtain a transfer value quotation would mean that Mrs Winstanley would no longer have the option of taking her benefits from the Scheme early. They said that at no time did they inform the Society that she had made a decision either way. They proposed that the leaver form should be amended to allow a transfer value to be calculated, but with an agreement that if it is better for her to take her benefits from the Scheme another leaver form is submitted.

14. Mrs Winstanley complained to the Society. The Society responded by email on 15 December 2011 to Mrs Winstanley saying:

- As a result of a request from CFM for early retirement benefits, they worked with the Authority to investigate the cost and legal implications of this, as the matter was new to them. They wrote to the CFM on 12 August 2011 approving the payment to Mrs Winstanley her retirement benefits.
- CFM confirmed that they were happy for Mrs Winstanley to fully retire on this basis and for the Society to issue a leaver form on the basis of “early retirement” which would allow her to receive details of her retirement benefits. It was made clear at the time that this was for leaving the Scheme and having the benefits put into payment and not for ‘estimate’ purposes.
- If CFM had not asked for early retirement, a form would have been filled out on a simple “retirement” basis and the pension would have effectively become deferred. At this point she would not have been entitled to have her pension paid early, which was clearly not the intention of CFM who were clear that she was being allowed to take her pension early.
- The rules state that the Scheme will act on the employer’s directions and there is no option to pick different retirement options and have estimates of these prior to making a decision.
- The delay referred to by CFM was due to the Society working with the Scheme to allow her to retire early.
- They asked Mrs Winstanley for her confirmation that she would like them to re-submit a leaver form, in contradiction to the previous form they were instructed to submit by CFM, to allow her pension to become deferred. Alternatively, she could have returned the response forms that came with her retirement details to have her pension put into payment immediately.

15. On 20 January 2012 Capita sent an email to CFM, Mrs Winstanley and the Society saying that under the regulations, a member does not have a right to a transfer value unless their benefits are deferred. However, despite the regulations, there is no reason why the employer could not give the member details of the available transfer value and then allow the early retirement to proceed under the original terms of early retirement with the employer's consent. This means that once GAD has provided the factors, they could provide a transfer value, and if the member elects to transfer, they just have to reject the offer of early retirement.
16. On 13 March 2012 Capita emailed CFM informing them that the new factors to calculate transfer values were released and they could proceed with the calculation of Mrs Winstanley's transfer value.
17. On 3 April 2012 Capita provided CFM with a transfer value quote of £219,324.28 for Mrs Winstanley. They pointed out that the quotation was not guaranteed.
18. In May 2012 Capita emailed CFM the early retirement benefits payable to Mrs Winstanley as from 30 April 2011. They said that as there was a delay, the pension would be backdated and interest would be payable on both the lump sum and the backdated pension. The figures quoted were the same as the figures the Authority had quoted to Mrs Winstanley in their letter of 1 September 2011.
19. On 30 November 2012, Mrs Winstanley wrote to the Society stating that she had now received a lump sum and the start of monthly pension payments. She said that while she appreciated the assistance of the Society from December 2011 when she contacted them directly, the delay in processing the request for a transfer value had resulted in costing her a year's income. She was therefore asking the Society to reimburse her for the shortfall in her pension to the sum of £9,970.54 plus interest over the period.
20. In an email on 26 November 2013 to the Pensions Advisory Service, CFM said that the final transfer value for Mrs Winstanley was £234,593.69 which was received on 30 May 2012. There was also a small transfer value of £6,000 from another pension arrangement transferred at the same time. Mrs Winstanley took 25% of the total transfer value as a tax free cash sum and used the remainder to purchase a joint life annuity of £9,970.54, which was on a level basis payable month in advance and

guaranteed for ten years. CFM said that tax free cash sum was important because it was used to clear Mr and Mrs Winstanley's mortgage.

Summary of Mrs Winstanley's position

21. The Society had informed the Authority that she was taking early retirement and this caused administration problems that delayed the transfer.
22. The Society was informed many times from April 2011 after she had left work that a transfer value was required on which to base the decisions she had to make. Throughout this period CFM contacted the Society up to two to three times per week for such requests, however no response was forthcoming. She was told by the Society that she had signed an authority for release of her pension on retirement grounds. This was not quite true. No such form was signed by her or by CFM. On challenging the Society on this and asking for a copy of the form, they were unable to produce one. The release form was completed by the Society, without authority and without her or CFM's knowledge. The completion of this form is key to further delay as its admission stopped the provision of a transfer value.
23. If she had been provided with information of the transfer value, which had been repeatedly requested from and before April 2011, it would have meant that a decision could be made as to how she wished to take her benefits. No decision was taken as there was no transfer value, therefore the completion of a leaver form was entirely inappropriate.
24. The delay in processing and providing information had affected the amount of her final pension. If the information had been forthcoming as requested, and at the time of request, she would have been able to transfer her pension before the suspension of transfer value and had an additional year of pension income.
25. In 2011 the Government changed the pension rules which further diminished her pension. Had the matter been resolved without delay, the sum would have been sufficient to pay the mortgage on her house.

Summary of Society's position

26. The involvement of CFM made the process longer.
27. The Authority contacted them in June 2011 about Mrs Winstanley leaving service and requested a leaver form to be submitted.
28. The email from CFM on 24 June 2011, enclosing a letter of authority from Mrs Winstanley, confirmed that CFM knew that a leaver form needed to be submitted before any information could be provided.
29. On 1 September 2011 the Authority sent direct to Mrs Winstanley details of her retirement benefits. This letter gave her the opportunity to express her wishes directly to the Authority.
30. In December 2011 they emailed Mrs Winstanley with details of the actions taken to date and asked her to confirm her intention of early retirement if this had changed.
31. In January 2012 there was a conference call meeting with Mrs Winstanley at which her concerns were addressed.
32. CFM requested early retirement estimates and were aware that these were being provided instead of deferred benefits.

Conclusions

33. Mrs Winstanley and CFM wanted an estimate of her retirement benefits and a transfer value which was guaranteed for a period. This information was needed so that she could decide which option was best for her. This was not an unreasonable request.
34. At the time Mrs Winstanley left service, the figures for both the estimated retirement benefits and the transfer value were calculated by the Authority as the administrator of the Scheme.
35. The Society's role as employer, was to provide the Authority with a completed leaver form showing the grounds on which Mrs Winstanley had left service and also to confirm that they consented to early payment of her pension, if she had left service on grounds of early retirement.

36. The Authority did provide CFM with transfer value quotations in February and June 2011 which were guaranteed for three months, but both these figures were based on incorrect leaving service dates. However, as there were no estimates of the retirement benefits Mrs Winstanley could receive as from 1 May 2011 no comparison could be made.
37. Prior to June 2011 CFM had been in direct contact with the Authority with regard to the information for Mrs Winstanley.
38. In late June 2011 the Society were informed that Mrs Winstanley wished to consider taking her benefits early from the Scheme and in August they gave their consent and asked for her confirmation that she wished to proceed with this. The Society needed to consider the cost implications of Mrs Winstanley taking her benefits early from the Scheme and therefore this was not an unreasonable for them to have taken the time they did to consider the matter.
39. CFM have said that they did not confirm one way or the other how Mrs Winstanley wished to proceed with the matter. It would have been prudent for the Society to check with CFM and/or Mrs Winstanley before submitting a completed leaver form. However, in my view, either Mrs Winstanley or CFM could and should have informed the Society that a decision on the matter would be made once all the information was received. This may have stopped the Society from issuing a completed leaver form to the Authority.
40. Mrs Winstanley says that from April 2011 onwards CFM had contacted the Society up to two to three times per week requesting a transfer value, but no response was forthcoming. The evidence shows that CFM sent the Society a letter of authority from Mrs Winstanley on 24 June 2011. The Society would not have dealt with CFM prior to receiving a letter of authority from her.
41. The Society submitted a completed leaver form stating that the Mrs Winstanley had left service on grounds of “early retirement”. This allowed the Authority to quote estimated retirement figures for Mrs Winstanley, but prevented them from quoting transfer value figures. However, shortly after the Authority had quoted the estimated retirement benefits, as a result of the GAD guidelines, all transfers from the Scheme were suspended.

42. Therefore even if the Society had checked the situation with CFM and/or Mrs Winstanley, by the time a response was received and a transfer value quoted the suspension would have been in place and any transfer value quoted could not have been guaranteed.
43. Undoubtedly, the submission of the completed leaver form stopped the Authority from quoting a transfer value. However, Mrs Winstanley also wanted information about her early retirement benefits and as the Authority was not willing to provide this information without a completed leaver form, the Society had to submit one.
44. The new factors for calculating transfer values were not available until the middle of March 2012, and therefore any delay between October 2011 and then could not be attributed to the Society.
45. I agree that had Mrs Winstanley and CFM been provided with all the information they requested earlier, then she would have started to draw her pension much earlier than she did. However, this would have required information for both her transfer value and her early retirement benefits being provided without any delays. The delays were in part due to the change in administrators for the Scheme and partly to the change in transfer value factors, neither of which were within the control of the Society.
46. For the reasons given above, I am unable to find that the Society were responsible for the delay in Mrs Winstanley receiving her transfer value from the Scheme.
47. Even if I was able find maladministration on the part of the Society, I cannot see what injustice she had suffered as a consequence of that maladministration. CFM said that the tax free cash sum was important to Mrs Winstanley and her husband because they wished to clear their mortgage. Therefore, her priority was to take the maximum tax free cash sum available to her. Her pension and from when she could draw it was of secondary importance.

48. By taking a transfer value, Mrs Winstanley could have a higher tax free cash than if she took her benefits early from the Scheme. There is nothing to suggest that she could have received a higher transfer value if there was no delay. Therefore, I cannot see what loss, if any, she has suffered. Consequently, I do not uphold the complaint against the Society.

Jane Irvine

Deputy Pensions Ombudsman

30 December 2014