

Ombudsman's Determination

Applicant	Mr N
Scheme	New Firefighters Pension Scheme (the Scheme)
Respondent	Merseyside Fire and Rescue Authority (MFRA)

Outcome

1. Mr N's complaint against MFRA is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that should be upheld, MFRA should pay £500 to Mr N, to compensate him for the significant distress and inconvenience that has been caused to him.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint about MFRA is about the delay in providing a Cash Equivalent Transfer Value (**CETV**) to him, and that he was given incorrect information about the transfer of his pension from the Scheme.

Background information, including submissions from the parties

4. Mr N joined the Scheme on 21 April 2008. On 10 November 2014, Mr N confirmed his wish to leave the Scheme and transfer his benefits. MFRA received the opt-out forms on 19 November 2014, and confirmed that his contributions had ceased.
5. MFRA says that it had to gather various financial information before requesting the CETV from the Merseyside Pension Fund (**MPF**), the Scheme administrator at the time.
6. On 2 February 2015, MFRA sent the CETV request to the MPF. Before and after this date, there was regular email communications between MFRA and Mr N, most of which were instigated by Mr N.
7. On 2 and 10 March 2015, Mr N chased up his request by email. On 10 March 2015, MFRA replied that it had followed up his request and would provide an update when available.

8. On 24 and 27 March 2015, Mr N sent further chaser emails to MFRA. On 27 March 2015, MFRA told Mr N by email (the **27 March 2015 Email**) that “if the calculations and the certificates takes time you are covered by the fact that you said YES to transfer before April”.
9. The reference to April 2015 is with regard to the introduction of the Pension Schemes Act 2015, which placed a restriction on transfers out of unfunded public service defined benefits schemes (such as the Scheme), to schemes offering flexible benefits. This restriction came into effect from 6 April 2015 (the **Deadline**).
10. MFRA received the CETV on 27 March 2015 and immediately sent it on to Mr N.
11. Mr N confirms that he received it on or around 30 March 2015, leaving about five working days until the Deadline.
12. At about the same time, MFRA says that it called Mr N and informed him of the Deadline. It says that it told him to go to the MPF office to complete discharge forms before the Deadline.
13. Mr N confirms that he spoke to MFRA but he was only told to go to the MPF office with some proof of identity, as part of the process. He says that he was not told about completing any discharge forms. He remembers going to the MPF office with his passport but does not recollect signing any discharge forms. MFRA also says that there is no evidence that Mr N completed any discharge forms.
14. Mr N requested a transfer again in September 2015. On 5 January 2016, Your Pension Service, the new Scheme administrator, wrote to Mr N saying that, as the required documentation was not completed before the Deadline, and the transfer could not proceed.
15. Mr N complained about the delay in providing the CETV and the misleading information in the 27 March 2015 Email, which said he would be able to transfer his pension after the Deadline.
16. MFRA issued its response on 4 May 2016. It said that it asked Mr N to urgently go to the MPF office and complete the transfer documentation before the Deadline. It said that, although Mr N went to the MPF office, he did not complete the discharge forms. MFRA maintains that Mr N’s independent financial adviser (the **IFA**) would have known about the Deadline and that the discharge forms were necessary. It did not uphold the complaint.
17. Mr N brought his complaint to us. He says that he and his IFA believed he had special dispensation to exceed the Deadline because of the 27 March 2015 Email. He disagrees that there was sufficient time to complete the discharge form before the Deadline, as a copy of the form was not provided and his IFA was unable to start the advice process until after receipt of the CETV. He says that he sent numerous emails and made telephone calls to follow up his request, but it took over four months to get the CETV.

18. MFRA says, while the time taken to provide the CETV may appear lengthy, it was introducing a new HR and Payroll system at the time of Mr N's request. This coincided with the receipt of numerous requests for CETVs, so it needed to ensure that the correct pensionable pay was used and that the pension calculations were accurate. It also says that Mr N received a CETV in July 2014, which would have enabled him to discuss his options with his IFA prior to receiving the s

Adjudicator's Opinion

19. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by MFRA. The Adjudicator's findings are summarised briefly below:
- The 27 March 2015 Email incorrectly led Mr N to believe that the transfer would proceed regardless of the Deadline.
 - There is no evidence to corroborate what Mr N was told during the phone call with MFRA, which likely took place on or around 30 March 2015. However, it is more likely than not that MFRA recognised that Mr N was in danger of missing the Deadline and took corrective steps to inform him of the need to complete the necessary forms at the MPF office before the Deadline.
 - MFRA has provided reasons why it took over four months to provide the CETV, but it did not inform Mr N that there would be delay in providing the CETV.
 - If the provision of the CETV at the end of March 2015 was too late for Mr N to liaise with his IFA and proceed with the transfer, by the same token therefore, it would appear that the 27 March 2015 Email was sent too late in the process to have made significant difference to the outcome.
 - The actions of MFRA have caused significant distress and inconvenience to Mr N.
 - To put matters right, MFRA should pay £500 to Mr N.
20. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

21. Mr N says that he received a CETV in July 2014, which allowed him to discuss his options with his IFA, and decide to leave the Scheme. He requested a new CETV to obtain the latest figures and decide on his LLAR allowance. Mr N says that MFRA did not provide him with discharge forms or tell him to go to the MPF office to complete them. He maintains that he was only told to take proof of his identification to the MPF office. He recognises that MFRA must have realised that it did not act

within sufficient timescales, hence the urgent call to him. However, it is supposition to say that MFRA would have instructed him to complete the discharge forms at the MPF office. Mr N says that he will continue to suffer financial loss, as well as distress and inconvenience, until he is able to transfer his benefits from the Scheme.

22. To a large extent, the complaint turns on the 27 March 2015 Email and the subsequent telephone call between MFRA and Mr N. The 27 March 2015 Email provided incorrect information, which MFRA says it corrected in its subsequent call to Mr N.
23. Mr N confirms that the July 2014 CETV allowed him to make the financial decision to transfer his benefits from the Scheme, and the new CETV was purely to resolve the outstanding LLAR issue and obtain updated figures. The LLAR issue was resolved in February 2015, in email correspondence with MFRA. The updated CETV was also provided on 30 March 2015. This means that there should not have been any obstacles to Mr N proceeding with his transfer from 30 March 2015, except for the discharge forms.
24. It does not appear that discharge forms were included with the CETV. At this point the telephone call between MFRA and Mr N becomes significant.
25. MFRA say that the pensions officer who made the original mistake asked Mr N to report to the MPF office to complete the discharge paperwork as a matter of urgency. Mr N says his recollection of the call is unclear. As there is no recording of the telephone conversation that took place, I have to consider what is likely to have been said, based on the actions of the parties.
26. It is agreed that the telephone call was of an “urgent” nature and it could only have been regarding the CETV and Mr N’s transfer request. The fact that Mr N was told to urgently go to the MPF office, is sufficient for me to decide that, on balance, MFRA had most likely discovered that it had misled Mr N about the deadline and was attempting to put matters right. Otherwise, there would have been no need for MFRA to contact Mr N following the issue of the CETV.
27. I am therefore satisfied that, on balance, MFRA asked Mr N to urgently visit the MPF office to complete the required transfer forms and, possibly, provide documentation to confirm his identity, because of the Deadline. However, it does not appear that Mr N completed the discharge forms on his visit to the MPF office.
28. In my view, the error in the email of 27 March 2015 was corrected in the subsequent telephone call to Mr N, and the failure to complete the transfer before the Deadline was therefore not as a direct result of that email. The trail of causation, which would have flowed from the email of 27 March 2015, was broken by the telephone call from MFRA.
29. I appreciate that the timescale to complete the transfer before the Deadline was tight. I also recognise that, bearing the proximity of the deadline in mind, MFRA also could have provided the discharge forms to Mr N. However, Mr N had already obtained

significant advice from his IFA, based on the July 2014 CETV, and MFRA was satisfied that all that was required was for him to complete the discharge forms at the MPF office prior to the Deadline. Mr N agreed to visit the MPF office (presumably to do so) and so I do not need to consider why other methods of providing the discharge forms were not considered.

30. Notwithstanding the above, MFRA should have informed Mr N of the delay in receiving the CETV, bearing the Deadline in mind. The error in the 27 March 2015 Email also amounts to maladministration.
31. Turning to remedy, Mr N wants to be permitted now to transfer out notwithstanding the legal barrier introduced by the deadline. I cannot make such a direction in the absence of a discharge form signed before the deadline because I am bound by the same law. In the circumstances, my power is limited to awarding compensation for any financial loss which Mr N can prove flows directly from the misstatement of 27 March 2015 and any distress or inconvenience caused by maladministration.
32. I do not consider that Mr N can demonstrate that he has suffered any financial loss, because he retains his right to his benefits, albeit not in the form that he prefers. I am satisfied that he has suffered significant distress and inconvenience as a result of maladministration by MFRA. .
33. Therefore, I partially uphold Mr N's complaint and make a direction aimed at remedying the injustice, although I appreciate that this is not the outcome in which Mr N is primarily interested.

Directions

34. Within 21 days of the date of this Determination, MFRA should pay £500 to Mr N, to compensate him for the distress and inconvenience that has been caused to him by its maladministration.

Karen Johnston

Deputy Pensions Ombudsman
31 May 2017