

## Ombudsman's Determination

Applicant	Mr G
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondent	West Northamptonshire Council ( <b>the Council</b> )

## Outcome

1. Mr G's complaint against the Council is partly upheld. To put matters right, the Council shall pay Mr G a further £250, in addition to the £250 already paid, in recognition of the significant distress and inconvenience caused.

## Complaint summary

2. Mr G has complained that he relied on figures quoted in an online retirement calculator when deciding to claim benefits from the Scheme, but the pension lump sum he subsequently received was significantly lower than expected, causing him financial detriment.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. The Scheme is governed by the Local Government Pension Scheme Regulations 1997 (**the 1997 Regulations**) as set out in the Appendix.
5. On 9 April 2021, the Council received a Pension Sharing Order (**PSO**) setting out Mr G's entitlement to a portion of benefits his wife (**Mrs G**) had accrued in the Scheme.
6. On 3 September 2021, the Council wrote to Mr G confirming that the PSO had been implemented and he had become a 'pension credit member' of the Scheme. As a part of this, he became entitled to a pension and, as Mrs G had not been paid a retirement grant before the valuation date of the PSO, a separate "lump sum grant".

7. Importantly, although a 'normal' member of the Scheme may be able to enhance their lump sum grant by commuting a part of their pension<sup>1</sup>, that facility does not apply to pension credit members such as Mr G.
8. On 4 November 2021, Mr G's financial adviser (**the Adviser**) telephoned the Council asking for a retirement quotation.
9. On 14 December 2021, the Council sent Mr G an early retirement quotation (**the December 2021 Quotation**) that set out benefits including a standard lump sum of £10,031.19 plus an annual pension of £3,134.48.
10. The Council operates a 'member self-service portal' (**the Member Portal**), which allows members to access details of their benefits. As a part of this, there is also a benefit projection facility (**the Calculator**) that allows members to select a current or future date of retirement, which in turn then displays the estimated deferred pension and lump sum (if any), along with any adjustments for early or late payment. The Calculator also provides a 'conversion option' that allows members to adjust their lump sum grant (between the minimum and maximum values). However, as acknowledged by the Council, this ability to adjust the lump sum contained in the Calculator "allows even pension credit members who do not have the option to convert pension to lump sum to adjust their values in this way...".
11. The Calculator included a disclaimer (**the Disclaimer**), that makes it clear that:

"The above figures are for illustration purposes only. Please ask your employer for a formal quote before making any decision about your pension. If you're a deferred or pension member please email us at [pensions@westnorthants.gov.uk](mailto:pensions@westnorthants.gov.uk). The conversion option is not available for some members that have pension credits."
12. It would appear that Mr G made use of the Calculator. On one occasion, on 16 March 2022, he created a 'task management case' within the Portal and received the following message:

"Subject: [Mr G], you have successfully requested a retirement payment through [the Member Portal]!"

Comments: For a leaving date of 16 March 2022 and a cash lump sum of £17,292.04, you will receive an annual pension of £2,593.82."
13. Later, on 26 April 2022, the Council received a pension claim form from Mr G confirming his intention to take the maximum 25% lump sum and a residual pension.
14. On 5 May 2022, Mr G sent a message to the Council via the Member Portal chasing a response to his benefits claim.
15. The Council wrote to Mr G on 30 May 2022 (**the May 2022 Statement**) with his formal award letter, that was both sent to him and uploaded on to the Member Portal.

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<sup>1</sup> See Regulation 20(3A)

The May 2022 Statement confirmed that his pension claim had been processed and that the benefits would be a standard lump sum of £10,463.95 plus an annual pension of £3,312.03 for early retirement on 1 May 2022.

16. On 30 May 2022, Mr G sent an online message to the Council and said he had obtained a retirement quotation via the Calculator available on the Member Portal, setting out figures including a maximum lump sum of approximately £18,000 plus a residual pension of around £3,300 a year. But, according to benefit details quoted in the Member Portal, he would receive a lump sum of only £10,463.95.
17. On 31 May 2022, Mr G conducted a telephone conversation with the Council during which it said it would increase the lump sum to £17,931.43, having already paid £10,463.95 of that sum, leaving a remaining portion of £7,467.48 to be paid to him.
18. On 1 June 2022, the Council emailed Mr G and said his benefits would be 'recalculated to reflect the maximum lump sum of 25% of his benefits' and the residual pension would also be adjusted accordingly in the June 2022 instalment.
19. However later, on 16 June 2022, the Council telephoned Mr G and said that it would not, in fact, be possible to increase the lump sum because he was a pension credit member following the PSO. The Council said the December 2021 Quotation was correct and, as a result of being a pension credit member, it would not be possible to commute a larger portion of the quoted pension.
20. In response, Mr G said the Calculator had given him the option of commuting 25% of the total benefits as a lump sum, so he no longer wanted to retire from May 2022.
21. On 15 July 2022, Mr G emailed the Council and complained that the lump sum he had been paid was around £8,000 lower than expected.
22. In response, the Council confirmed that an increased lump sum was not permissible under the 1997 Regulations, even though the option was inappropriately offered in the Calculator.
23. On 8 August 2022, Mr G complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:-
  - He had initially intended to claim his retirement benefits as a one-off lump sum but the related financial adviser fees were prohibitively expensive. On that basis he considered the possibility of claiming the maximum lump sum of approximately £18,500 plus a residual pension of £3,300 a year as quoted in the Calculator. For reassurance that these figures were correct, he telephoned the Council and received confirmation that he could claim the lump sum quoted in the Calculator. However, he subsequently received the May 2022 Statement confirming a lump sum of only £10,463.95.
  - When he contacted the Council to query the reduction in the lump sum, he was told that the maximum lump sum was not an option. So, he considered a transfer out of the Scheme on the basis that this could allow him to access all of the

benefits as a lump sum. But having taken financial advice, he established that a transfer would not be beneficial in that way. He accepts that an error was made by the Council and that the Scheme Regulations do not permit payment of the maximum 25% lump sum in his case. However, he had been misled by the Calculator and in the follow-up call to the Council, confirming the quoted online figures were correct.

- Having reported the error to the Council, its approach should have been to thank him for preventing more severe consequences, had other members been affected by the fault in the Calculator. He should be allowed to take the benefits as a one-off lump sum as a reward for saving the Council from “the embarrassment” it could otherwise have suffered. It was not satisfactory for the Council to address his concerns by simply suggesting that there had been an administrative error.

24. On 5 October 2022, the Council wrote to Mr G and said:-

- The error in the Calculator was exacerbated by the email of 1 June 2022, which incorrectly confirmed that a further portion of the lump sum would be paid the following week and increase the total to approximately £18,500. However, the Calculator included the Disclaimer stating, “The above figures are for illustrative purposes only. Please ask your employer for a formal quote before making any decisions about your pension...The conversion option is not available for some members that have pension credits”.
- Before receiving the misinformation in the Calculator, he had previously been sent the December 2021 Quotation, which did not include any conversion options to commute more pension for a larger lump sum than the standard figure quoted.
- His benefit entitlement resulting from the PSO was subject to the 1997 Regulations for Pension Credit members, which do not provide any right to commute a larger portion of pension than the standard level to increase a lump sum. As Mrs G ceased pensionable service on 12 October 2001, the pension debit applied to Mrs G and the corresponding pension credit awarded to Mr G was subject to Regulations 152 and 153 of the 1997 Regulations.
- Regulation 20(3)A which included provisions for the commutation of pension lump sums was not referenced in Regulation 152. So, Regulation 20(3)A did not apply to Pension Credit members. Consequently, he was not entitled to a larger lump sum than £10,591.14 plus an annual pension of £3,530.38. Those benefits were also actuarially equivalent to any benefits with the maximum lump sum, which meant he had not suffered financial detriment.
- The Letter dated 14 December 2021 did not include any additional pension commutation options so Mr G ought to have known that this was not possible. However, there was miscommunication and confusion regarding payment of the benefits resulting from his Pension Credit. For example, the disclaimer in the Calculator should have explained the term “Pension Credit” to avoid potential

confusion with State Benefits. An award of £250 was appropriate in recognition of this poor service and the resulting delays.

25. On 17 October 2022, the Council wrote to Mr G and said that the £250 award would be paid into his bank account within the next few days.
26. On 26 October 2022, Mr G appealed under stage two of the IDRP and said the Council ought to honour the larger lump sum quoted in the Calculator. Mr G also complained that the Council's award of £250 was insufficient recognition of the financial detriment, distress and inconvenience he had suffered.
27. On 23 December 2022, the Council wrote to Mr G and reiterated the conclusions previously reached in the letter dated 5 October 2022. The Council said that Mr G's benefits could only be paid in accordance with the Scheme Regulations and it would not be possible to commute a larger portion of his pension.

### **Mr G's position**

28. At the time of obtaining the overstated lump sum figure via the Calculator, he had an agreement in place with Mrs G to buy her share of a house they had jointly purchased. Under that agreement he needed to pay the cash settlement on the house to Mrs G by the end of September 2021. Due to his financial situation, he was forced to borrow £40,000 from family members in September 2021, as shown by a bank statement covering the period 18 September 2021 to 17 October 2021. So, this was a stressful period, during which he could have been left homeless, resulting from the poor service provided by the Council, had it not been for the financial support of his family.
29. A bank statement shows that he borrowed money before receiving the overstated lump sum that would be payable via the Calculator, or the subsequent reduction. However, the retirement benefits from some other pension arrangements he had relied on in making the agreement with Mrs G, had not been paid by the anticipated date. Consequently, he had to borrow money from family members to cover the period until the retirement benefits from those other arrangements were paid.
30. The disclaimer in the Calculator should not override the Council's repeated instances of guidance that he was entitled to the maximum pension lump sum of 25%, rather than the standard lump sum that was paid.

### **The Council's position**

31. Regulation 20(3A) refers to a "member" and "retirement grant" neither of which are relevant terms when considering pension credit members. A "pension credit member" is not a "member" in keeping with Schedule 1 of the 1997 Regulations, which states "Member" has the same meaning as in section 124(1) of the Pensions Act 1995 except that it shall not include a pension credit member except where specific reference is made to such member in regulation 94. That regulation relates

specifically to interest on late payment of certain benefits, which is irrelevant in Mr G's case.

32. A pension credit member receives a "lump sum grant" as defined in the provisions of Regulations 146 and 147, rather than a "retirement grant" as quoted in Regulation 20(3A) of the 1997 Regulations (see the Appendix). So, there is no provision under the 1997 Regulations permitting a "pension credit member" to elect to increase their pension lump sum to the maximum by commuting a larger part of their pension.
33. It is generally not possible to view retirement quotations that have been generated via the Calculator. So, it was unclear how many quotations Mr G had produced or the related dates. However, on 16 March 2022, Mr G triggered an online task message. This message showed a calculation for retirement on the same date with a lump sum of £17,292.04 plus an annual pension of £2,593.82. These two incorrect values correlate with the correct lump sum of £10,119.28 plus an annual pension of £3,191.55 on that date (with the Calculator then incorrectly allowing commutation of the pension to increase the lump sum).
34. This suggests that the Calculator was faulty in providing retirement quotations for Mr G via the Member Portal. However, the Council could not produce a retirement quotation other than correctly calculated in accordance with Scheme Regulation 20(3A). In view of the previous shortcomings in retirement illustrations generated via the Calculator, an updated caveat has been put in place. Improved training would also be provided to the Council's staff regarding pension credit members and their benefit entitlements.
35. Mr G has provided no evidence of having made any irreversible financial commitments based on the misinformation that caused him financial detriment. Mr G's only claim was that he had not received the value of pension commencement lump sum that he had anticipated receiving. The benefits paid to him are, in any case, actuarially equal to any benefits with a theoretically increased lump sum, so no loss has been suffered.
36. The service provided to Mr G regarding his retirement claim should have been better. So, he was paid a £250 award at stage one of the IDRP. A further award of £250 to make a total of £500 in recognition of the distress and inconvenience Mr G had suffered was possible.

## **Adjudicator's Opinion**

37. Mr G's complaint was considered by one of our Adjudicators who concluded that, while there was maladministration, there was no evidence that the Council caused Mr G financial detriment. The Council should pay Mr G a further £250 award in addition to the £250 already paid for distress and inconvenience. The Adjudicator's findings are summarised below:-

- The Council has acknowledged that the Calculator was faulty at the time Mr G obtained a retirement quotation on 30 May 2022, setting out figures including a maximum lump sum of approximately £18,500 plus a residual pension of around £3,300 a year.
- During the telephone call on 31 May 2022, the Council incorrectly agreed to increase Mr G's lump sum to the maximum figure of £17,931.43, from the standard sum of £10,463.95 that he was actually entitled to. The Council followed this up with the email dated 1 June 2022, stating that Mr G's benefits would be 'recalculated to reflect the maximum lump sum of 25%'. These instances of misinformation amounted to maladministration by the Council.
- It was not until 16 June 2022 that the Council telephoned Mr G and said that he had no entitlement to increase his lump sum to the 25% maximum, due to the fact that he was a pension credit member following the PSO. The December 2021 Quotation was correct and it would not be possible to commute a larger portion of the quoted pension.
- Mr G has acknowledged that he had agreed to purchase Mrs G's share of their house by the end of September 2021, and before the misinformation was provided by the Council in 2022. So, he could not have relied on the overstated lump sum quoted in the message on the Member Portal in March 2022, or the Calculator in May 2022, when making the house purchase agreement with Mrs G in September 2021.
- The Council could not be held responsible if the retirement benefits from Mr G's other pension arrangements were delayed at around the time of the house purchase agreement with Mrs G. Further, Mr G has provided no evidence regarding what he would have done differently, had he been aware that the lump sum would only be £10,463.
- The Council could only pay Mr G's benefits in accordance with the 1997 Regulations. As explained by the Council, Regulation 20(3) did not provide any entitlement for pension credit members, including Mr G, to increase their lump sum by commuting a larger portion of their pension. So, there was no evidence that the previously identified maladministration caused Mr G financial detriment.
- The Council has prudently said that due to the previous faults in the Calculator, an updated caveat has been put in place to guide members as to the limitations of the quoted benefits, and that improved training would be provided to staff regarding pension credit member benefit entitlements.
- Mr G would have suffered a loss of expectation when the Council eventually confirmed that he was entitled to a lump sum of only £10,463.95. This would have caused him significant distress and inconvenience. An award of £500 would be in keeping with the Pensions Ombudsman's guidance for non-financial injustice of this type. The Adjudicator noted that the Council had only paid Mr G £250.

38. The Council accepted the Adjudicator's Opinion, Mr G did not, and the complaint was passed to me to consider. Mr G provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr G.

### **Mr G's additional comments**

39. The distress and inconvenience he suffered was exacerbated by the fact that he had to repeatedly consider the Council's actions in making his complaints. He also found the complaints process unpleasant, having to take a great deal of time to re-read emails and letters that were pertinent to the case in attempting to prove he had suffered financial detriment caused by the Council.
40. The Council would have benefitted from other members not potentially experiencing the fault in the Calculator, due to the fact that he had pointed it out, enabling the Council to address the issue promptly and avoid additional expenses. If the Council had required an Information Technology (IT) consultant to investigate the issue, the Council's costs would have been higher than a £500 award.

### **Ombudsman's decision**

41. Mr G has complained that he relied on incorrect figures when deciding to claim benefits from the Scheme and that the pension lump sum subsequently paid was significantly lower than expected.
42. This is in essence a claim for negligent misstatement – that the Council made a false statement (the incorrect lump sum calculation) on which Mr G claims he relied and as a result, he says, suffered loss. However, for the reasons given by my Adjudicator, I find that claim fails.
43. Notably, the Council expressly excluded any assumption of responsibility for acts taken through the use of the Calculator through the Disclaimer. This made it clear that the figures produced by the Calculator “are for illustration purposes only” and that members should “ask [their] employer for a formal quote before making any decision about your pension.” Furthermore, it also highlighted that “the conversion option is not available for some members that have pension credits”.
44. Therefore, it was not reasonable for Mr G to rely on the figures produced by the Calculator in the way he claims. In any event, as my Adjudicator highlights above, if Mr G's decision to purchase Mrs G's share of their house was made in September 2021, before the misinformation was provided by the Council in 2022, he clearly was not acting in reliance of that misstatement when making a decision to buy the share.
45. The Council has offered £250 for the distress and inconvenience he has suffered, and the Adjudicator is of the view that an increased amount of £500 would instead be appropriate. Mr G has provided further comments which he says supports a view that the Adjudicator's award of £500 for the distress and inconvenience he suffered is insufficient. In particular, Mr G says that he was required to repeatedly consider the



Council's actions, and spend time re-reading emails and letters when attempting to prove he had suffered financial detriment.

46. I find that the Council's maladministration would have caused Mr G to suffer significant non-financial injustice. I therefore agree with the Adjudicator that an award of £500 (so, an additional £250 on top of the £250 Mr G has already received) is sufficient recognition of the significant distress and inconvenience he has suffered.
47. I partly uphold Mr G's complaint.

## **Directions**

48. To put matters right, the Council shall, within 28 days of the date of this Determination, pay Mr G a further £250 in addition to the £250 already paid, to make a total award of £500 in recognition of the significant distress and inconvenience he suffered.

**Dominic Harris**

Pensions Ombudsman  
18 January 2025

## Appendix

The 1997 Regulations (As Amended) provide that:-

20 (3A) A member in respect of whom a benefit crystallisation event (payment of benefits) occurs on or after 6th April 2006 may elect in writing to the appropriate administering authority before any benefits become payable to increase the retirement grant payable under paragraph (3) by commuting his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered but the entitlement to the benefit shall not arise until the date on which the member's appropriate administering authority receives the information it requires to calculate the increase.

(3B) But the total amount of the member's retirement grant, including any sum received in accordance with an election under paragraph (3A), shall not exceed 25% of the capital value of his accrued rights.

[...]

146. References in this Part to a pension credit member are to that person in relation to his pension credit rights and not in relation to any other rights he may have under the Scheme.

147. - (1) An administering authority may discharge their liability in respect of a pension credit in accordance with either sub-paragraph (2) or sub-paragraph (3) of paragraph 1 of Schedule 5 to the 1999 Act.

(2) Where the appropriate administering authority discharges its liability by conferring pension credit rights on the person entitled to the pension credit, those rights shall be to -

(a) a pension and a lump sum grant; and

(b) a death grant.

(3) But a pension credit member is not entitled to a lump sum grant if the transferor has been paid a retirement grant before the valuation date.

(4) The pension at the valuation date shall be calculated -

(a) by reference to the value of the pension credit member's credit rights calculated in accordance with regulation 10 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000, and

(b) in accordance with guidance issued by the Government Actuary.