

Ombudsman's Determination

Applicant	Mrs S
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Kent County Council (the Council)

Outcome

1. Mrs S' complaint against the Council is partly upheld. To put matters right, the Council shall pay Mrs S £1000 for the serious distress and inconvenience caused.

Complaint summary

2. Mrs S' complaint against the Council concerns its decision that she was only entitled to the pension calculated at the date of her leaving employment. She is unhappy that the value of her pension is not as high as it would have been, had she remained a member of the Scheme until her normal pension age. Mrs S also believes that she was misled and opted for voluntary redundancy (**VR**) on the basis of incorrect information.

Background information, including submissions from the parties

3. Mrs S was employed by Nonington Church of England Primary School (**the School**) since 2000 as a Teaching Assistant.
4. In March 2017, the Council sent Mrs S an annual benefit statement (**the March 2017 ABS**) showing "Projection of your pension benefits at your normal pension age [10/05/2029]; Total Annual Pension (including CARE and Final Salary benefits £5,477.65 per annum."
5. On 7 September 2017, an early consultation meeting was held with all School employees. During this meeting, employees were advised of an option to apply for VR.
6. On 8 September 2017, the Council provided Mrs S with a redundancy estimate and said:

"With regard to pension estimates, we only request these at the point that an employee has been confirmed as leaving due to redundancy. Please refer to

your most recent annual pension statement for an indication of what your payments will be.”

7. On 15 September 2017, the Council sent a formal proposal with an option of VR to all employees.
8. On 25 September 2017, Mrs S held a meeting with the interim Executive Head Teacher and HR representative but chose not to have a union representative present. At the meeting, they discussed issues regarding VR and pension matters, and Mrs S was informed of the following key points:-
 - No extension could be given for volunteers for redundancy as this would affect the timeline.
 - Once any request for VR had been accepted, it could not be rescinded as doing so would impact on the outcomes for other members of staff.
 - If Mrs S suggested to the panel that her role had in effect been removed from the new structure, and the alternatives offered were not ‘suitable’, then redundancy would be the only outcome regardless of how this may affect her pension.
 - Under the Scheme rules, if she was age 55 plus and the statutory definition of redundancy had been met, she had to take immediate payment of her unreduced pension benefits. Unreduced pension benefits meant the Council “will meet the cost of the employee contribution up to [her] normal retirement age.”
 - The guidance regarding VR criteria was in the terms and conditions of employment, sometimes called the Blue Book. It stated that if a member has two years or more pensionable service in the Scheme, and they are age 55 plus and the statutory definition of redundancy has been met, the member must take immediate payment of their unreduced pension benefits.
 - They were unable to comment on what her pension illustration could be, as they did not have access to her pension records.
9. Following the meeting, Mrs S wrote to the School on 30 September 2017, confirming her formal application for VR. In her letter, she said:

“The elimination of the regular overtime hours that I had been undertaking...has already reduced my pay significantly (from what I had become accustomed to receiving). The new permanent contracts (which are the only ones that existing [Teaching Assistants] should consider, as the fixed term roles have already been accepted by yourselves and the unions as not suitable alternatives) would provide a salary still lower.

This would leave me in the position where if I were to accept the new working arrangements, I would receive less than I need to meet my financial commitments. This means the new roles are not “suitable alternative employment” for me and unreasonable compared to the employment I enjoyed

before the changes brought on by the school's "financial difficulty" began to be implemented."

10. Her application was provisionally accepted by the School on 10 October 2017.
11. On 8 November 2017, the School sent Mrs S a letter confirming that her last day of employment would be 2 February 2018.
12. On 13 December 2017, the Council sent Mrs S a Redundancy Retirement Estimate showing an annual pension of £2360.37. This information was produced and sent to Mrs N after the Council obtained her final salary figure from the School.
13. On 14 December 2017, dissatisfied with the pension figure, Mrs S emailed the Council concerning the lower pension figure. In response the Council said:

"I note that you volunteered for redundancy on 10th October 2017 and did not receive your pension estimate until 14th December. I recognise this was not an ideal basis for you to make an informed decision as to whether you wished to apply for [VR].

Regrettably it is not always possible for a LGPS pension estimate to be made available to employees prior to formally volunteering for redundancy...it is not the policy of the LGPS Pension Section to provide an estimate earlier than 6 months prior to the anticipated date of redundancy or produce more than one estimate in any year. The LGPS pension section undertakes to produce pension estimates within 30 working days from receipt of the request...On this occasion there was a delay in the School obtaining salary information from Capita, their payroll provider.

...

However, importantly the pension is not enhanced to the level that would have been paid should the employee remain in employment and employer and employee contributions continue to be made up to their normal retirement age...I did advise you to seek guidance directly yourself...regarding any specific queries you might have regarding your pension...Regrettably it is not the policy of [the Council] to enhance an employee's pension should they be made redundant."

14. Dissatisfied with the Council's response, Mrs S raised a formal complaint under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**), in May 2018. In her submissions, Mrs S said that when she applied for VR, she believed that the Council would meet the cost of her contributions up to age 67, so that her pension benefits would be paid at a level equivalent to what would have been paid, had she remained in the Scheme until that age.
15. On 18 September 2018, the stage one decision maker on behalf of the Council sent Mrs S his response not upholding her complaint. In summary he said:-

- Regulation 30(7) of the LGPS Regulations 2013 (**the Regulations**) was applicable in Mrs S' case.
 - It was the School's responsibility to determine the reason for Mrs S' termination of employment, and whether she was entitled to the immediate payment of pension benefits.
 - It was then the Scheme's responsibility to calculate the value of the pension Mrs S would be entitled to in those circumstances.
 - For the purpose of the Regulations, the Council being the Scheme employer, and "the Pensions Section with [the Council], in its role as the administering authority", was responsible for the calculating of the pension benefits.
 - As Mrs S had already reached age 55, her pension benefits would have to be paid immediately the day after her last day of employment, regardless of the amount that was payable to her.
 - He noted that the Council "meant...to imply that [Mrs S'] benefits as calculated would not be subject to any actuarial reduction that might apply to someone leaving voluntarily and taking their benefits at the same age."
 - The School contended that it had informed Mrs S that it was not in a position to advise her of the actual figures payable to her, and that she should seek further advice from the pension department.
 - He noted the School had referred Mrs S to the March 2017 ABS for an estimate of pension benefits she might have received. While this might not have been best practice, his role was to check whether the Council complied with the Regulations. He did not have the power to investigate allegations of maladministration.
 - He was satisfied that the Council's decision was in accordance with Regulation 30(7) that states the payment of pension benefits was immediate, and while they were not subject to reductions they were also only paid at the value as calculated at the date of retirement and not enhanced to Mrs S' normal pension age of 67.
16. Mrs S further appealed under stage two of the IDRP in May 2019. In her submissions, she made the following key points:-
- The Council had provided her with factually incorrect and misleading information regarding her pension position before she made a decision to take VR.
 - The whole process put in place by the Council was flawed and discriminated against her, as she was over age 55 and taking VR would have "huge repercussions as far as [her] pension position and future pension income was concerned."
 - She carefully prepared questions regarding her pension for the meeting dated 25 September 2017 as this was important to her.

- It was clearly confirmed by the Council in writing following the said meeting that her pension benefits would be “made up” to age 67. This was subsequently shown “to be untrue and misleading and which tempted [her] to apply for [VR] when [she] would not otherwise have done so.”
 - She was given a short timescale to make a decision. She had to make the decision by 6 October 2017, and the Council referred her to the March 2017 ABS to get an idea of what her pension would be.
 - She referred to the Scheme’s website where it said, “*regardless of the reason for retiring, the request for an estimate MUST come from your employer.*” (original emphasis).
 - She had clearly done everything she could to find out what her pension position would be before she decided to take VR.
 - It was only in December 2017, that she finally received her correct pension estimate, which was too late.
 - She would like to be compensated for her loss of earnings, as well as the potential to accrue further pension benefits up to age 67, which amounts to an additional 12 years’ worth of pension she might have received.
 - As a result of the Council’s maladministration, she was left with around £877 less per month, than before the VR process had started. Her pension was “43% less” than what she had expected.
 - She and her husband had spent “many hours carefully planning for [their] future so as to have enough income and this has been undermined by the maladministration by [the Council].”
17. On 20 May 2019, the IDRPs stage two decision maker replied to Mrs S’ complaint, upholding the stage one decision and in summary said:-
- The Council complied with the Regulations in that her pension benefits were paid immediately, following the termination of her employment on the grounds of redundancy, for which it paid the Scheme the cost for the early release of unreduced benefits.
 - The Regulations provide that the Council may award additional pension to a current member who was dismissed by reason of redundancy under its discretion. However, this was not required by the Regulations. It was for the employer to decide if it wished to award additional pension.
 - This discretion could only be used in exceptional circumstances and only at the discretion of the relevant Corporate Director and the Corporate Director of People and Communications.

- The Council should not reconsider its decision, because the Council did not award additional pensions to other members who left employment by reason of VR, certainly not since the Regulations were introduced in 2014. By not awarding other members additional pension, the Council did not treat Mrs S differently.
- The decision maker considered Mrs S' argument that she was provided with incorrect and misleading information, and noted that the key issue was the meaning of "unreduced" and the different interpretation of it by the Council and Mrs S. The Council's meaning was that "the benefits payable would not be actuarially reduced to early payment."
- This issue could have been easily resolved by Mrs S contacting the Pension Section at the Council for further information.
- "Although the restructuring timetable set was tight, time should have been allowed for pension figures to be obtained from the Pension Section in order that informed decisions could be made."

Adjudicator's Opinion

18. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Council. The Adjudicator's findings are summarised below:-

- The Adjudicator's understanding of Mrs S' complaint was that she was unhappy that the pension she was currently in receipt of was lower than what she had expected to receive prior to taking VR. She also believed she was misled and opted for VR on the basis of the incorrect information. The Adjudicator explained her role was to check whether the Council's provision of information regarding Mrs S' pension amounted to maladministration, and whether Mrs S has been disadvantaged by this.
- The relevant regulation in Mrs S' case, was Regulation 30(7) of the Regulations, relevant sections of which are provided in the Appendix. This Regulation provided that an active member who was age 55 or over, and left employment on the grounds of redundancy, was eligible to immediate payment of an unreduced pension. The Adjudicator was satisfied that the Council complied with the Regulations when it paid Mrs S an immediate and unreduced pension after she left employment on VR grounds.
- The Adjudicator noted that Mrs S believed the Council provided her with incorrect and misleading information at the time she was deciding whether to take VR. However, in the Adjudicator's view, the Council provided Mrs S with the correct information, in accordance with the Regulations. It told her that she would receive an unreduced pension that would be made up to the value had Mrs S decided not to take her pension until age 67.

- However, although the Council provided Mrs S with the correct information, in the Adjudicator's view, it was confusing, and it could have been set out in a clearer manner. This is because Mrs S, as a lay person, seemed to have interpreted "unreduced" to mean that she would receive the same pension as she would have received had she remained in employment until age 67 if she took VR. The failure of providing further clarification, in the Adjudicator's view, amounted to maladministration.
- The Adjudicator noted that the School, during the meeting, dated 25 September 2017, advised Mrs S that it was not in a position to provide her with accurate pension calculations, and she should contact the Pensions Section at the Council for further information. In the Adjudicator's opinion, it would have been prudent for Mrs S to have sought further clarification regarding her pension position, especially when making such an important decision of whether to take VR or not. The Adjudicator did not see any evidence of Mrs S contacting the Pensions Section for further information.
- The Adjudicator appreciated that Mrs S, did not have long to make a decision concerning whether or not to accept VR, and that the Council had referred her to the March 2017 ABS to get an idea of what her pension could be. In the Adjudicator's view, it was reasonable for Mrs S to have referred to the information in the March 2017 ABS, as this was what the Council encouraged her to do. However, it was the Adjudicator's view that it was not reasonable for Mrs S to have relied on the information in the March 2017 ABS, as this was a pension illustration only and not guaranteed. This illustration was based on Mrs S' retirement age being 67.
- The Adjudicator noted that in her letter dated 30 September 2017, Mrs S said that with the elimination of the regular overtime hours she had been undertaking, she would not be able to afford the drop in her overall pay, under new arrangements. So, in the Adjudicator's view, had Mrs S been provided with clearer information by the Council, she would have still opted in for VR because she could not afford to stay in the job.
- The Adjudicator noted that it was not possible for the Council to have generated accurate pension figures before Mrs S left, and that it relied on the School to provide correct pay figures in order to calculate her pension. It admitted there was a delay in receiving information and it was only able to send Mrs S correct pension figures in December 2017, two months after she had applied for VR. However, in the Adjudicator's view, this delay was out of the Council's control as it was waiting for the School to provide it with correct pay figures.
- The Adjudicator also noted that the Council, under Regulation 31 of the Regulations, could use its discretion to pay members an additional pension. However, it explained such discretion was only used in special circumstances and this was not applicable in Mrs S' case, as it was not the Council's policy to enhance member's pension when their employment ended on the grounds of VR.

- In the Adjudicator's view the Council's maladministration identified above, would have undoubtedly caused Mrs S serious distress and inconvenience. In recognition of this, the Adjudicator recommended that the Council should pay Mrs S £1000.

19. Mrs S did not accept the Adjudicator's Opinion, and in response she reiterated her previous points and made some further comments, a summary of which is below:-

- She appreciated the Adjudicator's Opinion but believes £1000 is not sufficient to adequately compensate for her suffering as a result of the Council's fundamental errors and lack of consideration.
- Her pension has been reduced by £259 per month for the rest of her life so £1000 is only equivalent to a little under four months of pension shortfall.
- She had spent many hours "pulling together the evidence and preparing and submitting the required documentation in turn" to the Council.
- She argues it was not possible for her to get more accurate pension information before she left employment. This is because the Council can only generate accurate information once an individual has applied for VR.
- The reason she did not contact the Pensions Section for more information before she left, was that she knew already she would not have got any information. The request must come from the employer.
- Since the Council answered her question, during the meeting dated 25 September 2017, regarding the meaning of "unreduced", she felt no need to contact the Pensions Section for further clarification.
- Regarding her saying that with the elimination of the regular overtime hours, she would not be able to afford the drop in her overall pay, "this is not how [she] viewed things at the time." She says she had been told that her future position as a Teaching Assistant would have its contractual hours capped at a level below those she had been undertaking prior to her VR.
- She was given a choice of either staying in employment with a significant drop in pay or choosing VR payment plus a monthly pension of around £456 per month.
- She was not given any indication of the "real situation/choice". She has not been able to find alternative employment and she and her husband have had to top up her monthly income by drawing on the tax free element of his personal pension.

20. I have considered Mrs S' additional points but I agree with the Adjudicator's Opinion.

Ombudsman's decision

21. Mrs S believes she was provided with incorrect and misleading information by the Council, on which she based her decision to apply for VR.

22. I find that the Council provided Mrs S with the correct information in line with the Regulations. The key issue in Mrs S' case is the way she interpreted the meaning of the information she received from the Council, in relation to the pension she could get if she took VR.
23. I consider that the information was confusing, and it could have been set out in a clearer manner. The Council told Mrs S, in the meeting of September 2017, that unreduced pension benefits meant the Council "will meet the cost of the employee contribution up to [her] normal retirement age." I recognise Mrs S, as a lay person, unfortunately, seems to have assumed "unreduced" to mean that she would receive the same pension as she would have received had she remained in employment until age 67 if she took VR. But I also find that the Council could have provided further clarification to Mrs S regarding the fact that leaving due to VR did not entitle Mrs S to receive the same amount of pension had she remained in employment until age 67, which amounts to maladministration. However, the Council also told Mrs S that it did not have her exact pension figures hence she should contact the Pensions Section for further information. Having been told this, I find that it would have been prudent for Mrs S to have contacted the Pensions Section to at least check that the assumption she made in the meeting was correct before she made a decision.
24. I recognise that the Council had referred Mrs S to the March 2017 ABS to get an idea of what her pension could be. I find that it was reasonable for Mrs S to have referred to the information in the March 2017 ABS, as this was what the Council encouraged her to do. But I consider that it was unreasonable for Mrs S to have entirely relied on the information in the March 2017 ABS, as this was a pension illustration only and not guaranteed. This illustration was based on Mrs S' retirement age being 67. Again, I would expect Mrs S to have contacted the Pensions Section to check whether the figures quoted in March 2017 were guaranteed, especially as it was six months old and contained a caveat "Projection of your pension benefits at your normal pension age [10/05/2029]". I find that, even as a lay person, Mrs S ought to have realised the figures were calculated with the assumption that she would stay in employment until age 67, and not based on her leaving due to VR.
25. Mrs S argues she would not have taken VR if she had known what her correct pension position was at the time. It is rarely easy to determine what someone might have done if presented with different information at the time of making a significant decision such as leaving employment. The fact is that Mrs S was not able to afford a drop in her overall pay if she decided to stay in her job. So, on the balance of probabilities, I find Mrs S would most likely have chosen VR, had she received the correct pension figures before she made the decision to apply for VR.
26. The provision of confusing information by the Council would have undoubtedly caused Mrs S serious distress and inconvenience. Even though I am not able to conclude with certainty that Mrs S would have reached a different decision, her distress at a time when she was making life changing decisions will have been in proportion to the amount involved, which is not insignificant. I therefore find that

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£1000 award is warranted in Mrs S' case in recognition of the serious distress and inconvenience suffered.

27. I partly uphold Mrs S' complaint.

Directions

28. Within 14 days of the date of this Determination, the Council shall pay Mrs S £1000 in recognition of the serious distress and inconvenience caused.

Anthony Arter

Pensions Ombudsman
19 July 2021

Appendix

The Local Government Pension Scheme Regulations 2013 (SI 2013/2356)

“30. Retirement Benefits

(7) Where an active member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of -

(a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State; and

(b) any other retirement pension relating to that active member's pension account payable under these Regulations, without reduction...”

“31 Award of additional pension

(1) A Scheme employer may resolve to award—

(a) an active member, or

(b) a member who was an active member who was dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under regulation 16), not more than the additional pension limit payable from the same date as any pension payable under other provisions of these Regulations from the pension account to which the additional pension is attached, provided that, in the case of a member falling within sub-paragraph (b), the resolution to award additional pension is made within 6 months of the date the member's employment ended.”