

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (the Administrator) Surrey County Council (the Employer)

Outcome

1. Mr N's complaint against the Administrator and the Employer is partly upheld. To put matters right, the Administrator shall pay Mr N £500 in recognition of the significant distress and inconvenience caused.

Complaint summary

2. Mr N's complaint is that the Employer, and the Administrator, incorrectly informed him that he was entitled to an unreduced pension from the Scheme.
3. Mr N has said that, as a result, his retirement plans have been put on hold, he has had to downsize his home and he is now left with half the income he expected.

Background information, including submissions from the parties

4. In 1989, Mr N took up a teaching role with the Employer and in 1996, he joined the Scheme.
5. On 31 December 2011, Mr N became a deferred member of the Scheme.
6. At a later date, Mr N took up a senior, non-teaching role with the Employer, and was invited to join the Local Government Pension Scheme (**LGPS**). Mr N was given the opportunity to transfer his Scheme benefits into the LGPS but chose not to.
7. In 2018, the Employer began restructuring its children services function and offered its staff the opportunity to apply for voluntary redundancy (**Redundancy**).
8. On 8 November 2018, Mr N contacted the Employer to enquire about Redundancy, as he would have reached the minimum retirement age of 55 in March 2019, if his application for Redundancy was accepted.

9. On 30 November 2018, the Employer sent Mr N notional figures for Redundancy and an estimate of his LGPS benefits. It gave Mr N a deadline of 10 December 2018, to decide if he wished to apply for Redundancy.
10. Shortly thereafter, Mr N submitted his application for Redundancy to the Employer.
11. On 8 January 2019, Mr N emailed the Employer to see if its severance review group had considered his application for Redundancy.
12. In late January 2019, the Employer informed Mr N that his application for Redundancy had been accepted.
13. On 1 February 2019, Mr N emailed the Employer and said:
 - the Administrator had confirmed that following Redundancy, he could take his retirement benefits from the Scheme at age 55, with no reduction; and
 - the Employer needed to contact the Administrator and provide the relevant forms and approval.
14. On 15 February 2019, the Employer contacted the Administrator, and said:
 - it had offered Mr N Redundancy and he would reach age 55 in March 2019;
 - Mr N became a deferred member of the Scheme on 31 December 2011 and he had subsequently joined the LGPS; and
 - Mr N wanted to take his Scheme benefits by way of early retirement, without a reduction.
15. On 18 February 2019, the Administrator responded with a standard email template, that explained:
 - an unreduced pension could be paid to a member who had reached age 55 when their employment was terminated by way of Redundancy or organisational efficiency; and
 - the Administrator would pay an actuarially reduced pension and lump sum to the Employer. At which point the Employer would pay the shortfall to cover the difference, resulting in an unreduced retirement benefit.
16. In response, the Employer said:
 - it intended to pursue the option of unreduced retirement benefits for Mr N; and
 - it suggested a retirement date of 30 April 2019.
17. On 8 March 2019, the Administrator responded with the same email template as that sent on 18 February 2019.
18. On 25 March 2019, the Employer responded to the Administrator and said:-

- The Administrator's email was "a template response, identical to the one it was sent on 18 February."
- The Administrator should confirm:
 - the cost to the Employer for unreduced retirement benefits; and
 - what forms, if any, the Employer or Mr N needed to complete.

19. On 1 April 2019, the Employer informed Mr N that it was still waiting for the Administrator to provide early retirement figures and details of the cost of unreduced retirement benefits. It also said that:

"It is the policy of the Surrey County Council to award unreduced premature retirement benefits to Teacher scheme members aged 55 and under normal pension age whose employment has been terminated on the grounds of redundancy or organisational efficiency. Having checked with a colleague in our own Pensions team, they have confirmed that this would include voluntary redundancy.

On this basis, the acceptance of your request for voluntary severance on the grounds that you would be able to access both your teacher and LGPS pots without reductions can be confirmed."

20. On 15 May 2019, the Administrator responded to the Employer's email, from 25 March 2019, it apologised for the time taken to respond and explained that:

- Mr N did not meet the criteria for unreduced payment of his Scheme retirement benefits because he was offered Redundancy;
- redundancy was classed as a severance payment (**Severance**); and
- the Scheme regulations did not allow for early retirement with an unreduced pension if the member had received Severance.

21. On 16 May 2019, in response the Employer said that:-

- The Administrator had taken three months, to confirm that Mr N was not entitled to early retirement with an unreduced pension. This put the Employer in a "challenging position."
- Its internal pensions team had confirmed that by taking Redundancy, Mr N was entitled to an unreduced pension at 55. It had advised Mr N on this basis.
- The Administrator should confirm:-
 - What regulation specifically stated that Mr N was not entitled to unreduced early retirement benefits having accepted Severance and whether there was any discretion available.

- Whether Mr N's benefits would be reduced permanently if he took early retirement as a deferred member of the Scheme.
 - The value of Mr N's reduced and unreduced benefits at age 55.
 - What the mandatory compensation costs would be if it granted unreduced early retirement benefits.
 - The process for Mr N to claim early retirement with either reduced or unreduced benefits.
22. On 17 May 2019, Mr N completed his last working day, with the Employer.
23. On 24 May 2019, the Employer emailed Mr N and explained that:-
- The Administrator had confirmed he was not entitled to unreduced early retirement.
 - He could take early retirement from age 55, but with an actuarial reduction.
 - It recommended that Mr N contact the Administrator to query his entitlement.
24. On the same day, Mr N responded to the Employer. He said he was "horrified" to receive the Employer's email and explained that:-
- He had received written confirmation that he could take his Scheme benefits, unreduced.
 - He had only accepted Redundancy because the Employer had confirmed that the Scheme benefits and the LGPS benefits would be paid unreduced, from age 55.
25. On 31 May 2019, the Administrator responded to the Employer's email of 16 May 2019. It apologised and explained that:-
- To take early retirement, with unreduced benefits, a member had to leave active employment by Redundancy, or by way of organisational efficiency.
 - Mr N was a deferred member of the Scheme when he took Redundancy, so he was not entitled to take his benefits from the Scheme, at age 55, unreduced.
 - Mr N could take early retirement, at age 55, but with actuarial reductions.
 - It was the Employer's duty to administer the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015.
26. On the same day, the Employer contacted Mr N to confirm that it was still investigating his entitlement from the Scheme following his Redundancy.

27. On 14 June 2019, the Employer emailed Mr N to apologise. It confirmed that he was not entitled to unreduced Scheme benefits, before he reached age 60, because he was a deferred member of the Scheme.
28. On 20 June 2019, the Administrator sent the Employer confirmation of the reduced and unreduced benefits that Mr N was entitled to from the Scheme: -
 - Reduced benefits: £6,247.07 as an annual pension and a Lump Sum of £19,153.52.
 - Unreduced benefits: £7,702.93 as an annual pension and a Lump Sum of £23,617.17
29. On 25 June 2019, Mr N met with the Employer. The Employer offered Mr N a “without prejudice” lump sum of £7,500 (**the Offer**), to supplement the shortfall between his reduced and unreduced annual pension. The deadline to accept the Offer was 5 July 2019.
30. On 3 July 2019, Mr N made a complaint under the Employer’s complaint procedure. In summary, he said:-
 - He only accepted Redundancy on the understanding he could access his unreduced Scheme benefits when he reached age 55. He had received written confirmation that he was entitled to this.
 - He was still in employment with the Employer when it was notified that he was unable to take unreduced benefits.
 - He had surrendered an endowment policy to pay off his mortgage. This was in expectation of receiving his Scheme benefits unreduced.
 - He could not afford to take the Scheme benefits with a reduction, meaning his overall retirement income, from the LGPS and the Scheme, had been reduced by half.
 - The deadline imposed on the Offer had caused him further distress.
31. Between July and September 2019, Mr N continued to correspond with the Employer about his ongoing complaint.
32. On 10 September 2019, the Employer responded to Mr N’s complaint. It did not uphold the complaint, explaining, in summary:-
 - It had “acted in good faith” based on the information provided by the Administrator.
 - It had no discretion to enhance Mr N’s pension due to the Scheme regulations.
 - The Offer was still available for Mr N to accept.

- It advised Mr N to make a complaint with the Administrator under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), due to the provision of erroneous information.
33. On 16 September 2019, Mr N made a complaint under stage one of the Scheme's IDR. Mr N explained that:-
- The Administrator had sent incorrect information to the Employer.
 - Had the Administrator sent the Employer the correct information, he would not have accepted Redundancy, leaving behind a 30-year career.
34. On 30 September 2019, the Administrator responded to Mr N's stage one IDR complaint and said:-
- It did not uphold Mr N's complaint.
 - It had sent the Employer standard, generic emails that were not tailored to Mr N's specific circumstances.
 - The requirements for unreduced retirement benefits were set out in the Scheme regulations and it had no discretion with regard to this.
 - It would not grant Mr N unreduced retirement benefits or make good any shortfall in his entitlement.
 - It apologised that its previous correspondence with the Employer was misleading.
35. On 14 October 2019, Mr N asked for his complaint to be investigated under stage two of the Scheme's IDR as has he remained dissatisfied with the Administrator's response, explaining that:-
- He did not feel the Administrator had fully understood his complaint.
 - It was unclear why the Administrator had responded to the Employer's specific questions, on both occasions, with standard and generic responses.
 - The Administrator's misleading information had put him in a difficult position.
 - He had to downsize his house to be able to "afford to live".
36. On 29 October 2019, the Department of Education responded to Mr N's complaint. It did not uphold Mr N's stage two IDR complaint and provided a similar response to the Administrator's stage one IDR response. It concluded that the Employer's email of 15 February 2019, was clear that it was referring to a deferred member of the Scheme and said that "It is disappointing that only generic information was provided to the Employer initially".

37. Mr N's position:-

- He contacted the Employer in February 2019, after his application for Redundancy was accepted, to establish his financial position for both of his pensions.
- Based on the information that he was given on 1 April 2019 he had considered that retirement was affordable, because he could access both pensions with no reduction at age 55.
- Had he been given the correct information about the Scheme benefits he would not have taken Redundancy.
- His Scheme retirement benefits will be reduced if he takes them before he reaches age 60. As a result, he is only in receipt of his LGPS pension.
- His retirement income has been reduced by half and he has had to downsize his house in order to afford to live on his income.

38. The Employer's position:-

- Mr N accepted Redundancy because it had informed him that he could, in principle, take early retirement with an unreduced pension from the Scheme. However, it did not provide specific figures until 20 June 2019. So, it was not reasonable for Mr N to enter into any commitments before he had received confirmation of how much he would receive.
- It is likely that Mr N had planned to downsize his house before he was informed that he was no longer entitled to an unreduced pension from the Scheme.
- Mr N has not shown any evidence that he had tried to mitigate his losses by seeking an alternative form of employment.
- While he is not obliged to take an actuarially reduced pension, had he chosen to, his reduced annual pension would be £6,247.07 and a lump sum of £19,153.52.
- The Offer made to Mr N was "fair and reasonable" as it covered the shortfall between the reduced and unreduced annual pension for five years.
- It took appropriate and reasonable steps to obtain confirmation and clarification about Mr N's benefits within the Scheme.

39. The Administrators position:-

- It can only pay benefits in accordance with the Scheme regulations. In addition, it did not have any discretion to enable the payment of Mr N's benefits unreduced before age 60.
- Mr N is a deferred member of the Scheme, so he does not meet the requirements for an unreduced pension, despite taking Redundancy.

- It could have provided the Employer with a more detailed response. But it was not recognised that Mr N was a deferred member of the Scheme when the response was sent.
- It should not be required to meet the cost of providing an unreduced pension to Mr N, by doing so, this would constitute unjust enrichment.

Adjudicator's Opinion

40. Mr N's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of the Administrator, but no further action was required by the Employer. The Adjudicator's findings are summarised below:-

- The Administrator can only pay benefits in accordance with the Scheme regulations.
- Mr N was a deferred member of the Scheme when he took Redundancy, so, he was only entitled to an unreduced pension when he reached age 60.
- Mr N had decided to apply for and accept Redundancy before he was provided with any incorrect information. It was clear then that the incorrect information could not have affected Mr N's decision to take Redundancy.
- It was evident that Mr N had moved to a new house since raising his complaint with the Employer. However, he had not provided any evidence to suggest that he had downsized or that he wasn't planning to move in any event. Additionally, he has not provided any evidence that he had tried to mitigate his decision not to take his reduced pension by returning to work in some capacity.
- There was nothing to suggest that he had suffered financial detriment as a result of the misinformation. Mr N is still able to take a reduced pension from the Scheme or wait and receive an unreduced pension when he reaches normal retirement age.
- The Administrator should have provided the Employer with a more detailed response about the circumstances specific to Mr N earlier than it did. However, it was not reasonable for the Employer to rely on the Administrator's template responses when it confirmed what Mr N's entitlement was to him. The Employer was aware the responses were templates, but it did not make further enquiries concerning Mr N's entitlement with the Administrator.
- The Adjudicator considered that Mr N's complaint should be partly upheld because of the provision of misinformation, due to several acts and omissions, which, in the Adjudicator's opinion, amounted to maladministration. However, the Adjudicator believed that the Employer had taken reasonable steps to put matters right and provided Mr N with the Offer, which was reasonable in the circumstances.

- In the Adjudicator's view, £500 would be an appropriate award for the significant distress and inconvenience caused to Mr N by the Administrator's actions.

41. The Employer has accepted the Adjudicator's Opinion and has said that the Offer remains payable to Mr N.

42. The Administrator had no further comments to add.

43. Mr N did not accept the Adjudicator's Opinion and his 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 and note the additional points raised by Mr N. He said:-

- He did not agree that the Offer put him back in the position he would have been in, had he not been provided with the misinformation. He believed that he should be compensated with the value of the difference between the reduced and unreduced lump sum and annual pension. Mr N calculated that this amounted to £63,000.
- He believed that by taking an unreduced pension, the Offer would only account for the difference of the reduced and unreduced yearly pension, for five years. After this, his pension would remain reduced for the duration of his lifetime.
- While he accepted that he was not entitled to a reduced pension at age 55, he believed that the Employer should provide further compensation in addition to the Offer.
- His decision to retire was only made possible by making significant lifestyle adjustments. This included downsizing his house and paying off his mortgage. As of now, all of his retirement plans were on hold and he had to seek alternative employment as a labourer for a landscape gardening company to ensure he had sufficient income to survive.
- His decision to accept Redundancy was, in part, based on his online annual benefit statement from TP. This, coupled with the confirmation from the Employer that he could take unreduced benefits from TP, led him to take Redundancy on the terms offered, because he could afford to.
- He was offered a new position with the Employer at the same time as the Redundancy exercise. He declined the role because the Employer confirmed that he could take unreduced benefits when he reached age 55 having taken Redundancy.
- He accepted the award of £500 to be paid by the Administrator. However, because the Employer was not asked to offer additional compensation, he believed that the Employer was not being held accountable for its actions.

Ombudsman's decision

44. Mr N has accepted that he is not entitled to unreduced pension benefits from the Scheme until he reaches age 60. However, he does not agree that the Offer fully addresses the financial injustice caused to him by the provision of incorrect information. He feels that an appropriate offer would need to reflect the difference between the reduced and unreduced benefits payable from age 55 for the remainder of his lifetime. Mr N suggests appropriate compensation amounts to £63,000.
45. When considering redress for financial injustice I cannot place an applicant in a more favourable position than they would have been had maladministration not occurred. In this case, Mr N has chosen not to put his reduced benefits into payment and so will receive unreduced benefits from the age of 60. He cannot therefore claim he will suffer a financial loss for the remainder of his lifetime.
46. My role is to provide redress if it can be shown that financial injustice flowed from the incorrect information given. I will consider whether it is more likely than not that the person relied on the incorrect information and that it was reasonable for them to have done so.
47. Mr N says that his decision to take Redundancy was not taken lightly, because to do so, he would need to make significant lifestyle adjustments. One such adjustment was that he had to downsize his house, in order to pay off his existing mortgage. Mr N has said that he used the proceeds of an endowment policy to pay off his mortgage in the expectation of receiving unreduced retirement benefits at age 55. Mr N has not provided any evidence that he downsized his property, details of either the mortgage he redeemed or the endowment policy. Without any substantive evidence it is difficult to conclude that he took these decisions in reliance of receiving unreduced benefits from age 55. But in any event it is a debt that he would have had to repay eventually.
48. Mr N contends that his decision to apply for Redundancy was, in part, based on various online annual benefit statements. He says that the online statements outlined his estimated pension when he reached age 60 and this with the Employer's confirmation that he could take unreduced benefits led him to believe he could afford to accept Redundancy. I do not necessarily think it unreasonable for Mr N to have considered the figures in the online benefit statements in order to gain an understanding of the approximate level of benefits he might expect to receive. However, the purpose of a benefit statement is to provide illustrative figures only they are not guaranteed.
49. Mr N submits that he was offered an alternative position with the Employer at the same time as the Redundancy exercise. He has said that if he had been provided with the correct information earlier, he would have accepted the new role and remained in employment. Mr N applied for redundancy in late 2018. At the time he had received notional figures for Redundancy and an estimate of his LGPS benefits. His Redundancy application was confirmed in January 2019, and it was not until early February 2019 that Mr N was first advised, incorrectly, that he could take unreduced

benefits from the Scheme from age 55. It is clear therefore that the level of benefits Mr N might have received from the Scheme was not a deciding factor in his decision to turn down the alternative role offered by the Employer and instead to apply for Redundancy.

50. I find that, while Mr N was misinformed that he could take unreduced benefits at the age of 55, there is no evidence to support that he then relied on that misinformation to his detriment.
51. The Employer has accepted that it has provided Mr N with incorrect information and has acknowledged Mr N's loss of expectation and distress and inconvenience. While I sympathise with the situation Mr N finds himself in, I am satisfied the Offer made by the Employer is reasonable redress given the circumstances. If Mr N wishes to accept the Offer, which the Employer has agreed is still payable, he should approach the Employer directly.
52. The Administrator's failure to provide a detailed response to the Employer sooner than it did is maladministration which will have caused Mr N significant distress and inconvenience which should be recognised.
53. The complaint is partly upheld against the Administrator, and I make the appropriate direction below.

Directions

54. Within 21 days of the date of this Determination, the Administrator shall pay Mr N £500, in recognition of the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
29 April 2021