

Ombudsman's Determination

Applicant	Mr F
Scheme	Greater Manchester Pension Fund (the Scheme)
Respondents	Tameside Metropolitan Borough (the Administrator) Manchester City Council (the Council)

Outcome

1. I do not uphold Mr F's complaint and no further action is required by the Administrator or the Council.

Complaint summary

2. Mr F's complaint is that the Council and the Administrator did not permit payment of unreduced early retirement benefits on compassionate grounds.
3. Mr F has also complained that the Council and the Administrator reached this decision by exercising powers conferred by the Council's Discretions Policy (**the Discretions Policy**) under Regulation B30 of the Scheme Regulations 2013, which had been amended since he left employment. Mr D believes the decision should have been made under the version of Regulation B30 in force in 2010.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. The Scheme is part of the Local Government Pension Scheme (**LGPS**).
6. The Administrator is the Appointed Stage Two Referee (**the Referee**), for the Scheme. The role of the Referee is to consider appeals from complainants under Stage Two of the Internal Dispute Resolution Procedure (**IDRP**).
7. In 1978 Mr F took up employment with the Council and became an active member of the Scheme. He left employment in 2010.
8. Mr F says the purpose of leaving his post in 2010, at the age of 47, was in order to take full-time care of his severely disabled niece. When he left employment, his

accrued pension benefits were deferred for payment at his normal retirement date (**NRD**).

9. On 20 November 2018, having reached the age of 55, Mr F emailed the Council to ask it to consider his application for unreduced early retirement on compassionate grounds. Mr F provided details of his full-time permanent caring responsibility.

10. On 13 March 2019, the Council responded as follows:-

- It had to consider Mr F’s request in light of the Discretions Policy, set out as follows:-
 - “Discretion policies in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014:-

Description of the discretionary area	Legislation reference	The Council’s response and approach to this area of discretion
Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30 (member)	B30(5), TPSch2, para 2(1)	The Council will not normally exercise this discretion except where there is a clear financial or operational advantage to the Council.

- It had considered the details Mr F had provided regarding his financial position and caring responsibilities.
- It acknowledged Mr F was the main carer for his niece and that this commitment was of long standing. It also noted he had been in a similar position since he left employment in 2010.
- It noted that there had been no recent changes to, nor deterioration in, Mr F’s niece’s condition which would indicate a change in Mr F’s current circumstances from that which had been in place since 2010.
- The documentation Mr F had provided showed that his niece had a support package in place, including day care, evening care, and respite for Mr F, as well as a financial package to support Mr F and his family.
- The capital costs of waiving actuarial reductions as a direct result of Mr F receiving his pension benefits early were considered to be significant, which was also taken into account.
- The Council declined Mr F’s request for unreduced early retirement on the basis that waiving the reduction penalties would not have an impact or bearing on Mr

F's long-established caring responsibilities. Further, the cost to the Council of waiving these penalties could not be justified.

- However, Mr F could access his pension from age 55, subject to early retirement reductions.

11. On 26 March 2019, Mr F appealed the Council's decision, saying:-

- The information the Council had used in reaching its decision "bore very little relation to reality".
- The longstanding care package was "a nightmare", which did not cover his niece's day and evening activities nor taxi costs. All of this had to be paid for.
- Although respite care was available, they could find no carers willing to look after somebody with his niece's care needs within the Local Authority funding pay structure, so the family were unable to take a holiday together.
- Since his niece had transitioned from Child to Adult Services, the allowance now paid for her fell well short of that payable when she was a child. Mr F had to fund the shortfall from his savings, which had gradually been used up and were almost depleted, as a result.
- The relevant Council departments were very familiar with his niece's case, and the significant financial implications for Mr F of the various changes that had occurred along the way since 2010.
- He had been unable to work since leaving the Council's service and would never be able to work again while caring for his niece.
- He sought confirmation that the Council was looking at this unique case on compassionate grounds.
- He asked for an examination of Manchester City Council's historical involvement with this complex case and for a reconsideration of its decision.

12. In May 2019, the Council issued its IDRPs Stage 1 response stating:-

- It noted Mr F's contention that the Council had not taken into consideration the facts in reaching its decision to decline his request for unreduced pension benefits.
- It noted his wish to have the matter reconsidered, taking account of the compassionate grounds and historical challenges his family had faced in the past with authorities and professionals involved in his niece's case.
- It set out the Regulations and Policies relevant to the matter:-
 - LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended).

- LGPS (Administration) Regulations 2008 (as amended).
- Manchester City Council's Discretions Policy, specifically B30(5), TPSch2, para 2 (1) as set out in its letter to Mr F dated 13 March 2019.
- It was satisfied that the Council had considered Mr F's original application in the light of their powers of discretion and taking account of the information he had submitted regarding his financial and personal situation.
- It did not believe the Council had acted unreasonably in rejecting Mr F's application and did not uphold his appeal.
- It appreciated Mr F had taken on considerable responsibility with his niece's long-term care needs, but an established package of benefits had been awarded to him and to his niece. This package had been set and deemed applicable by the relevant authorities to meet her assessed needs, such that her care was not reliant on Mr F accessing an unreduced pension, as there was already a financial arrangement in place in this regard.
- If Mr F felt the support he was receiving was inadequate, he should take this up directly with the organisations who were assessing his niece's needs and providing that support.
- The Council's consideration of Mr F's compassionate circumstances did not automatically mean penalties that reduced his pension for early retirement would be waived. The Council's Discretions Policy had to take into account both his circumstances and the benefits/costs to the Council of granting his request for unreduced pension benefits.

13. On 13 May 2019, Mr F appealed the Stage One IDRPs decision, saying:-

- He had taken responsibility for his niece when her family circumstances were found to be precarious and she was removed from her parents.
- If he had not stepped in to look after his niece, her care would have cost the Council around £70,000 per year.
- The established package of care for his niece had nothing to do with Mr F's request for an unreduced pension as he received none of that benefit. He only received an allowance to provide his niece with a "roof over her head" and support for her needs.
- The reasons he sought early release of his pension on compassion grounds now he had reached age 55 were :-
 - He had been unable to work since taking on caring responsibilities for his niece. He remained unable to work, and would be unable to do so in future for that reason.
 - His niece required round the clock care on a daily basis.

- The case should be reviewed, taking into consideration the historical significance of the circumstances which had impacted upon his pension.
- The Council had the discretion to consider compassionate grounds where the employee is the sole or main carer for a dependant or close family member, such as his niece.

14. On 26 July 2019, the Stage Two IDRPs letter was issued by the Referee. The principal points of this response were:-

- A member could choose to take their pension from age 55. However, that pension must then be reduced by the amounts shown as appropriate in guidance provided by the Government Actuary to account for early payment.
- It was for the Council to make the decision regarding whether, or not, it was prepared to waive the reduction penalty for taking a pension early, at age 55. The role of the Referee was restricted to reviewing the decision reached at Stage One of the IDRPs to ensure the correct procedure had been followed in the Council's exercise of its discretion.
- The Scheme was a statutory scheme, which meant its rules were regulations made by Parliament. The relevant Regulations were:-
 - Regulation B30(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended).
 - Regulation 66 of the LGPS Scheme (Administration) Regulations 2008 (as amended).
- It provided copies of these Regulations to Mr F.
- Having made its decision not to uphold Mr F's appeal, he should understand that it would only be reconsidered in a very exceptional case where there had been manifest error, which was not the case here.
- The Council's decision had been made in clear exercise of its discretion. This decision was consistent with the Council's published policy on such requests for early release of pension on compassionate grounds.
- The Council had not made an unreasonable decision, nor one that would not be made by another decision maker.
- Accordingly, Mr F's appeal was rejected.

15. Mr F's position:-

- The Council had used the wrong criteria to assess his case.
- It had also refused to take into account the complex issues of his unique circumstances.

- The Council stated under Regulation B30(5) TPSch2, paragraph 2(1) that it “will not normally exercise discretion to pay him unreduced benefits except where there is a clear financial or operational advantage to the Council”. However, he had saved the Council thousands of pounds in “taking on board” a “special needs” child with learning difficulties. His position was not filled when he resigned from the Council’s service, so he has also saved the Council in salary and pension contributions since that time. Accordingly, he has demonstrated:-
 - Exceptional circumstances as set out in Regulation 2.4.4 (Exercise of Discretion) “and any exceptional circumstances that may exist”.
 - Compassionate grounds.
 - Financial savings to the Council.
- He had been unable to take up gainful employment since leaving the Council’s employment due to his commitments to caring for his niece. He needed his pension income to help with his living expenses.

Adjudicator’s Opinion

16. Mr F’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Administrator or the Council. The Adjudicator’s findings are summarised below:-

- The Adjudicator noted that Mr F believed that his request for early payment of his pension on compassionate grounds was exceptional, given his caring responsibilities. She also noted that Mr F felt that the costs of his niece’s care, which he had said would fall on the Council if he were not caring for her, should be weighed against the costs of allowing him unreduced pension benefits to assist him in his caring duties.
- The Adjudicator acknowledged the substantial commitment Mr F had made in giving up work to look after his niece and noted that he found the care package and financial support provided to him for her care to be inadequate.
- However, the Adjudicator was of the opinion that the Ombudsman would not uphold Mr F’s case because, if the Council were to permit him to take an unreduced pension early, the Scheme would have to bear this cost. Further, the Council would still have to bear the ongoing costs of the existing agreed care package for Mr F’s niece, as well as the ongoing costs of any support allowances already granted to Mr F.
- The Adjudicator explained that Local Government pensions were largely funded by the public purse, and while the Council had discretion to pay Mr F his pension both early and unreduced, it must also consider the long-term financial health of the Scheme.

- The Adjudicator also acknowledged that the Council had a duty to protect the pension benefits of current members, pensioner members and future pensioner members. In her view, the Council's primary duty towards the Scheme was to ensure its continued ability to maintain guaranteed income and other guaranteed benefits.
 - The Adjudicator noted Mr F's belief that the Council had used more recent Regulations than it should have done when considering his case. The Adjudicator disagreed with this contention, explaining that the event about which Mr F complained did not take place in 2010, which was merely when Mr F resigned from the Council's service. He did not seek an early unreduced pension until 20 November 2018. It was therefore appropriate that the Council had used the version of the Regulation quoted in paragraphs 12 and 14 above.
 - The Scheme Regulations permitted the Council to make decisions about Mr F's pension and the only role for the Adjudicator was to examine the matter to see if the Regulations had been properly applied. She considered that the Regulations had been properly applied in this case.
 - The Scheme Regulations also gave the Council discretion as to the outcome after reviewing his request for early, unreduced payment of his pension on compassionate grounds. The Adjudicator considered that the Council had correctly applied its Discretion Policy in this matter.
17. Mr F did not accept the Adjudicator's Opinion and the complaint was passed to me to determine. Mr F 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 F, which are summarised below:-
- Mr F quoted Appendix 2, Regulation B30, point 4 of the IDRP Stage Two letter dated 26 July 2019. Mr F argued that the Government Actuary's rates of reduction were only for "guidance purposes".
 - He considered the Referee's conclusion that "The Council had not made an unreasonable decision, nor one that would not be made by another decision maker" to be "rather influencing".
 - He believed Regulation B30(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended), and Regulation 66 of the LGPS Scheme (Administration) Regulations 2008, as amended, supported his complaint as these stated for non-active members in 2014:-
 - "(9) Any pensionable pay received or contribution made by a member on or after 1st April 2014 which relates to work carried out before that date shall be dealt with in accordance with the 2008 Scheme."
 - No-one seemed willing to accept the evidence he had provided regarding the "clear financial savings and operational advantages" to be had from paying him

his pension early and unreduced. Yet he had saved the Council thousands of pounds by taking in a “special needs child” with learning difficulties. The Council had not replaced him when he left its service in 2010, thus saving further costs in salary, pension contributions and other costs of his employment.

- He felt that the allowances received by his niece did not “come anywhere near” cancelling out any funds the Council would need to pay if she were still being cared for by the local authority rather than living under his roof, and benefitting from the care and accommodation he provided to her.
- He had been unable to work since leaving the Council’s service because of his commitment to caring for his niece.
- All of the evidence constituted exceptional circumstances, that merited being granted an unreduced early pension.

Ombudsman’s decision

18. The LGPS permits each employer certain discretions in how it manages certain retirement scenarios. It also sets out the various duties each employer has, one of which is to produce and maintain a written policy statement, stating how it will exercise its discretion. In Mr F’s case, the Council has set out in its Discretions Policy the factors it considers when it exercises its discretion relating to whether, or not, it will grant payment of an unreduced early pension, including those to be found under Regulation B30 governing the choice of unreduced early payment of pension.
19. I have considered the various points raised by Mr F. Turning first to his point regarding the Government Actuary’s advice, Mr F seems to infer that, because this is advisory, it follows that the application of any reduction is also advisory. However, if the Council were to grant early payment before a member’s normal retirement age, any resulting amount would have to be reduced using the reduction factors supplied by the Government Actuary’s Department.
20. In Appendix 2 of the IDRP Stage Two letter to which Mr F refers, the Referee explains that a member is entitled to a pension payable immediately, from the age of 55 onwards. However, the pension “must be reduced by the amounts shown as appropriate”. While the extent of any reduction would be based on the Government Actuary’s advice, it can be seen that there is a mandate to reduce the pension if it is taken early.
21. The Council has the discretion to decide whether or not to reduce the pension, and by what extent. Under point 2.4.3 of the Discretions Policy the Council states that “nothing in this Policy Statement shall fetter the Council’s discretion to exercise its powers”. Accordingly, it has the power to make a decision about Mr F’s case. As the Discretions Policy specifically references cost, the Council has the power to make decisions based on financial grounds regardless of any other considerations Mr F might believe entitle him to an unreduced pension.

22. The primary consideration for the Council is whether or not, in exceptional cases such as those Mr F argues apply to him, there is a “clear financial or operational benefit to the Council” in releasing Mr F’s pension unreduced and early. In this case, it has decided that the costs of providing Mr F with an unreduced pension are too significant for the Scheme to bear. In reaching this decision, I am satisfied the Council has acted in keeping with the Regulations and the Discretions Policy.
23. I note Mr F’s point about the Referee’s conclusion that the Council’s decision was not unreasonable. Mr F finds the Referee’s assumption that the decision would not be out of kilter with that which another decision maker might likely reach to be “rather influencing”. It is not entirely clear what Mr F means by this statement. However, the Referee is specifically appointed to review all the evidence offered under Stage Two IDRPs and ascertain whether, or not, the correct procedure has been followed by the Council in exercising its discretion in this matter. If the Referee considers the decision made was not unreasonable, and was one that any other decision maker would likely reach, it is not for me to question that conclusion.
24. Mr F also believes the Regulation quoted under B30(5)(9) regarding pensionable pay and pension contributions, as quoted in paragraph 17 above, supports his complaint that the matter should be dealt with under the 2008 Scheme. However, the subject of this Regulation is pensionable pay received by a member, or a member contribution made on or after 1 April 2014. Accordingly, it does not apply to Mr F, who left the Scheme when he resigned in 2010. He has, therefore, received no pensionable pay nor made any member contributions to the Scheme since that date.
25. Mr F has also argued that his pension should be released early and unreduced on compassionate grounds, maintaining that his situation amounts to “exceptional circumstances”, as mentioned in paragraph 15 above. The Council defines what it considers to be compassionate grounds as “caring responsibilities where the employee is the sole or main carer, providing substantial support to a partner, a dependant or close family member”.
26. However, it does not define what it considers constitutes “exceptional circumstances”. It is not for me to offer a definition of what those circumstances should be, nor to decide whether Mr F’s circumstances are sufficiently exceptional that his complaint should succeed. It is for the Council to decide whether, in line with the Regulations of the Scheme and the Discretions Policy, it will deem Mr F’s situation to be sufficiently exceptional to merit waiving any reduction which would otherwise be applied to his pension benefits if he takes them early.
27. Mr F has also argued that the Council should have used the Regulation B30 in force when he resigned in 2010. However, in the Council’s response dated 13 March 2019, set out in paragraph 10 above, it stated to Mr F that it had to consider his request in the light of the Discretions Policy regarding scheme members “who ceased active membership on or after 1 April 2008 and before 1 April 2014. It is clear that the Council’s intention was to review the matter under the Regulations applicable to his leaving date in 2010.

28. I have reviewed the Pension Scheme Policy Statement Regulations dated 30 July 2014 and set out in Appendix 1, Item 6 of the IDRPs Stage 2 letter dated 26 July 2019. It does state “the relevant legislation is that which is in force at the time the employee leaves the scheme”. However, under point 4, discretions that apply to members who left the scheme before 1 April 2014, the Council states it “will generally only exercise this discretion on compassionate grounds, taking into account the economic impact on the Council”. I do not agree with Mr F that this is different in its meaning or intent from the most recent version, which is that “the Council will not normally exercise this discretion except where there is a clear financial or operational advantage to the Council”. In both cases, the Council’s concern is based on financial considerations, and whether there is a cost or an advantage for the Council in granting Mr F’s request.
29. I consider the Council has complied with the requirements of the Discretions Policy, which state it must take into consideration the economic impact to the Council of the request. The Council has stated in its responses to Mr F that, while it understands his caring responsibilities, the cost to the Council would be “significant”. Furthermore, a care package has been provided which the Council considers sufficient for Mr F and his niece without having to resort to taking his pension benefits early.
30. I note Mr F’s contention that his decision to give up work to provide a home and full time care for his disabled niece has, and will continue to offer substantial potential savings to the Council in comparison to the costs if he were not her primary care provider. However, I am not persuaded that the Council would obtain an advantage by granting Mr F’s request for an early, unreduced pension. It would still have to pay the agreed care costs already granted to Mr F and his niece, and any other allowances she is eligible to claim. Meanwhile, the Scheme would have to bear the costs of his early retirement.
31. The Council has to take into account various factors and follow the Regulations when considering requests for unreduced early payment. Provided that the Council has considered all relevant factors; ignored irrelevant ones and it is a decision that is within the parameters of what another Council may make, then I cannot request that it reconsiders the matter or exercise the discretion in its place whether or not I agree with the decision. I see nothing to suggest that the Council has erred in its consideration and application of the various Regulations cited in the two IDRPs letters already issued to Mr F, or that it failed to take full account of the effects of such a request on the financial health of the Scheme and on the Council
32. Turning now to the other points Mr F has raised regarding the various regulations that he believes supports his complaint, I do not believe these to be directly relevant to this complaint. The relevant regulations are those set out in paragraph 12 and 14 above, namely:-
- LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended).

CAS-44381-K1J8

- Regulation 66 of the LGPS Scheme (Administration) Regulations 2008 (as amended).
- Manchester City Council's Discretions Policy, specifically B30(5) TPSch2 para 2.

33. Much of what Mr F has quoted or paraphrased in response to the Adjudicator's opinion is not relevant because the complaint is about whether, or not, he should receive his pension early and unreduced. The 2008 Scheme or other related schemes to which Mr F may have belonged will have similar features in respect of penalties for early retirement. These are taken account of when the Discretions Policy is updated from time to time.

34. I do not uphold Mr F's complaint.

Anthony Arter

Pensions Ombudsman
18 March 2022