

Ombudsman's Determination

Applicant	Mr L
Scheme	Local Government Pension Scheme (LGPS)
Respondents	Hull City Council (the Council) East Riding of Yorkshire Council (the Administering Authority)

Outcome

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

Complaint summary

2. Mr L has complained about the Council's decision in 2017 not to apply its discretion to allow a transfer of benefits beyond the 12-month transfer window.
3. He also complained about the Council's failure to complete the transfer of his benefits in 2001 and to exercise its discretion to allow the transfer in 2008. He has been told that these aspects of his complaint were brought out of time and have therefore not been investigated.

Background information, including submissions from the parties

4. Mr L began employment with the Council in June 2001. He previously accrued pension benefits in the Tyne & Wear Pension Fund (**T&W Fund**), between 1988 and 2001.
5. On becoming a Council employee Mr L elected to join the East Riding Pension Fund (**the Fund**) and transfer his previously accrued pension benefits from the T&W Fund to the Fund.
6. On 1 November 2001, the Administering Authority wrote to Mr L to provide details of the level of benefits he would receive if he wanted to proceed with the transfer. The Administering Authority provided Mr L with a notice of election form (**the Election Form**). The notes on the Election Form said:

"If you do not reply within one month of the date of this letter, I will assume that you do not wish to link your past and present periods of membership at the moment."

7. On 6 November 2001, Mr L completed the Election Form and confirmed that he wanted his accrued benefits in the T&W Fund added to the Fund.
8. There is no evidence to show that Mr L sent the Election Form to the Administering Authority.
9. In October 2008, following an enquiry regarding his transfer request made in 2001, the Administering Authority wrote to Mr L to confirm that it did not receive the completed Election Form. As a result, the transfer did not complete in 2001. Under LGPS regulations (**the Regulations**), all transfers must be made within 12 months of joining the Fund. However, the Council had discretion under the Regulations to extend the 12-month deadline. The Administering Authority provided Mr L with details on how he could ask the Council to exercise its discretion.
10. In response to Mr L's request for the Council to apply its discretion, the Council said that it would only consider late applications beyond the 12-month period if there were extenuating circumstances. As there were none in this case, it rejected Mr L's request.
11. In July 2017, Mr L requested a transfer of his T&W Fund benefits to the Fund. The Administering Authority informed Mr L of the relevant Regulations and said he should contact the Council to ascertain if it would apply its discretion.
12. On 13 July 2017, Mr L asked the Council to apply its discretion and gave the following reasons why it should do so:-
 - He had proof that he completed an Election Form, signed and dated on 6 November 2001.
 - The figures quoted at the time meant it would have been advantageous to transfer his benefits, with no possible drawbacks.
 - The accompanying notes on the Election Form said that he had the option of transferring his benefits into the Fund as long as he was an active member of the Fund.
13. On 20 July 2017, the Council responded and said that:-
 - The Administering Authority never received the completed Election Form so the transfer could not complete in 2001.
 - The Administering Authority had no obligation to chase Mr L for a response, having sent him the Election Form for completion.
 - At the time Mr L joined the Fund, the Regulations allowed for a transfer to take place at a later date if he remained an active member. However, the Regulations changed in April 2004 and limited the transfer window to 12-months from commencement.

- As Mr L held deferred benefits outside of the Fund, it was the responsibility of his previous employer to inform Mr L of the change in Regulations.
14. In August 2018, as Mr L remained dissatisfied with the Council's decision not to apply its discretion, he raised a complaint under stage one of the Fund's Internal Dispute Resolution Procedure (**IDRP**). He said that:-
- He did not receive any notification from his previous employers regarding the change in Regulations.
 - He tried to complete the transfer again in 2008 and 2017.
 - He had delayed taking his retirement benefits until this had been resolved.
15. In October 2018, the Council responded to Mr L and said:-
- When the Regulations changed, it was the responsibility of Mr L's previous employer to notify him of this. The pension fund that held the preserved benefits had the responsibility for communicating changes in the Regulations.
 - The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (the **Disclosure Regulations**), confirmed this, stating that where information is applicable to different members (active, deferred, etc), the scheme is only required to disclose information that is relevant to those members.
 - Mr L had not provided any details of extenuating circumstances. So, it considered that it was within Mr L's control to return the Election Form and check that it had been received.
 - It did not uphold the complaint.
16. In April 2019, Mr L appealed the Council's decision through stage two of the IDRP. In response, the Administering Authority said that the Council acted in accordance with the Regulations and fairly decided not to exercise its discretion in extending the 12-month transfer window.

Adjudicator's Opinion

17. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council or the Administering Authority. The Adjudicator's findings are summarised below:-
- The Regulation relevant to Mr L's situation is set out in Appendix A. This states that Mr L had 12 months to transfer his deferred benefits in the T&W Fund to the Fund, from the date he became an active member of the Fund. Further, the Council had discretion to extend the 12-month transfer window to allow Mr L to complete his transfer.

- Having highlighted the relevant Regulations, it was important to determine whether the Council and the Administering Authority applied it correctly. Mr L requested a transfer of his benefits from the T&W Fund to the Fund in 2017. As Mr L joined the Fund in 2001, the 12-month transfer window had closed. So, the Administering Authority correctly applied the Regulations and advised that Mr L could ask the Council to apply its discretion and allow the transfer.
- The Council said it would only apply its discretion in extenuating circumstances. The Council considered that there were none in this situation and rejected Mr L's request. This was because: (i) Mr L failed to return the Election Form within the 12-month window in 2001; (ii) Mr L failed to follow up on the status of his transfer request in 2001; and (iii) Mr L knew that his transfer had not completed in 2008, when he requested the Council to apply its discretion then.
- The decision on whether to apply the discretion was for the Council to make. The Adjudicator could only check whether the Council had followed the Regulations. In the Adjudicator's view, the Council had considered all the relevant factors in Mr L's request and reached a reasonable decision in concluding that there were no extenuating circumstances in this situation. So, in the Adjudicator's view, there had not been any maladministration by the Council.
- Mr L argued that he was unaware of the Regulation change in April 2004, which removed the option of transferring his T&W Fund benefits into the Fund, if he remained an active member. While Mr L may not have been aware of the change, it was not the responsibility of the Council or the Administering Authority to inform Mr L of this change. The Disclosure Regulations (see Appendix B for the relevant section), stated that the responsibility to inform him of the change in the Regulations 1996 of his deferred benefits, would have been with the administrators of the T&W Fund.
- Consequently, it was the Adjudicator's opinion that this complaint should not be upheld.

18. Mr L did not accept the Adjudicator's Opinion and in response, he said in summary:-

- Following his instruction in 2001, the Council should have transferred his LGPS benefits from T&W fund to the Fund for the same reasons he had previously said.
- He was made redundant in October 2017, on his 56th birthday. The result of the Council's failure to transfer his benefits meant that he could not claim his full pension forthwith. He had to either wait four years or accept a reduction of 24% in respect of his benefits with the T&W Fund. He has therefore suffered a financial loss of either: (i) £43,880 if he waited until the age of 60; or £2,633 per annum for life.
- He has been retired for over four and a half years and is still unable to claim his pension. Also, he is unable to determine the lump sum element of benefits until he has accurate figures for his pension entitlement.

- The Council clearly informed him that he could transfer at any time during his employment. It subsequently did not inform him when this position had changed. In fact, it had provided him with incorrect and misleading information.
 - The Council is in the unique position of being able to remedy his position by using its discretion to allow the transfer.
 - The Council was the only organisation that knew he had both a previous and current LGPS pension benefits. How would T&W Fund know which of its former employees had gone on to another employer offering LGPS benefits.
 - He cannot find evidence that the Council provided him with information regarding the change in the transfer regulations.
 - He referred to the time when he was being made redundant. He was not happy with the way the Council had dealt with his redundancy by not offering representation or consulting with him in any meaningful way. It was not able to send him a copy of his employment contract.
 - He is unhappy that it appears to be entirely his responsibility to communicate, request, follow up, and check accuracy of provided information without any onus on the Council to do the same.
19. As Mr L did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr L provided his additional comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr L.

Ombudsman's decision

20. As has been explained in Paragraph 3 above, I can only consider the decision made in 2017 not to exercise discretion to allow Mr L to transfer his benefits held under the T&W Fund to the Fund.
21. Mr L is unhappy with the decision not to apply discretion to allow him to transfer his deferred benefits into the Fund, following the expiration of the 12-month transfer window.
22. The Regulations applicable at the time of this decision are The Local Government Pension Fund Regulations 2013. The relevant Regulation is set out in Appendix A.
23. My role is not to direct them to allow Mr L to complete his transfer, it is to check whether they have followed the Regulations in reaching their decision.
24. In 2017, it was for the Council and the Administering Authority to decide whether to exercise discretion to extend the timescale. The evidence shows that the Administering Authority referred the decision to the Council and did not exercise discretion itself. However, as the decision was a joint one and the Council decided not to exercise its discretion, this has no material impact on the outcome.

25. The exercise of discretion is an absolute one. I find that the Council considered Mr L's request before it decided not to apply discretion in his case. I find that the Council acted in accordance with the Regulations, and its decision was reasonable given the circumstances of the case. The fact that Mr L disagrees with the Council's discretionary decision not to allow him to transfer his benefits beyond the 12-month transfer window, does not mean that the Council's decision was incorrect.
26. Mr L has referred to the inability for him to be able to claim his full pension benefit at the time when he was made redundant, as a result of his inability to transfer his benefits. However, I find that this was not due to any maladministration on the part of the Council.
27. Mr L has also referred to the time when he was being made redundant from his job and the way the Council dealt with it. As this is an employment matter and not a pension matter, I am unable to consider this. Mr L may wish to raise these issues directly with the Council.
28. I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
15 June 2022

Appendix A

The Local Government Pension Fund Regulations 2013

Inward transfers of pension rights

“100.—(1) An active member with relevant pension rights may request the appropriate administering authority to accept a transfer value for some or all of those rights from the relevant transferor.

(2) Relevant pension rights are—

(a) accrued rights under a registered pension scheme other than rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and

(b) accrued rights under a European pensions institution.

(3) Accrued rights under a registered pension scheme include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993(1).

(4) The relevant transferor is the trustees or managers of the scheme under which the transferring person's relevant pension rights arise.

(5) But the relevant transferor for the rights specified in paragraph (3) is the trustees and managers of the scheme, or the insurance company, to which a payment in respect of the person's accrued rights has been made.

(6) A request from a transferring person under paragraph (1) must be made by notice in writing given to the appropriate administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the person first became an active member in an employment (or such longer period as the Scheme employer and administering authority may allow).

(7) Where a request under paragraph (1) is duly made, the administering authority may accept the transfer value and credit it to its pension fund.”

Appendix B

The Occupational Pension Schemes (Disclosure of Information) Regulations 1996

Regulation 4 - Basic information about the Scheme

“(4) Where different information is applicable to different members, prospective members and beneficiaries, nothing in this regulation shall be construed as requiring the trustees to disclose information in relation to a member, prospective member or beneficiary that is not relevant to that person’s rights or prospective rights under the scheme, or, where disclosure is made to a trade union, of any matter which is not relevant to the rights or prospective rights of members or prospective members who are of a class of employee in relation to which the trade union is a recognised trade union for the purposes of collective bargaining.”