

Ombudsman's Determination

Applicant	Ms N
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	North Yorkshire Pension Fund (NYPF)

Outcome

1. I do not uphold Ms N's complaint and no further action is required by NYPF.

Complaint summary

2. Ms N has complained that NYPF unreasonably aggregated her retirement benefits to include pension funds accrued during previous periods of pensionable service, causing her financial detriment.

Background information, including submissions from the parties

3. The Local Government Pension Scheme Regulations 2013 (**the 2013 Scheme Regulations**) that governs the Scheme states that:

“(8) Where a deferred member again becomes an active member...the benefits in the deferred member's pension account must be aggregated with those in active member's pension account unless:

(a) within 12 months of the active member's pension account being opened; or

(b) such longer time as the Scheme employer in relation to the active member's pension account permits, the member makes an election to the appropriate administering authority to retain the deferred member's pension account.”

4. The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (**the 2014 Scheme Regulations**), state that:-

“(6) A member with deferred benefits relating to earlier schemes, who did not become a member of the 2014 Scheme by virtue of regulation 5(1) of these

regulations...but who subsequently becomes an active member of the 2014 Scheme may:

- (a) within 12 months of the active member's pension account being opened; or
- (b) such longer time as the Scheme employer permits, elect to receive a transfer value payment in relation to the deferred benefits to be credited to the active member's pension account to purchase earned pension in accordance with actuarial guidance issued by the Secretary of State."

5. On 3 September 2018, Ms N re-joined the Scheme with NYPF, having previously accrued deferred benefits held within three separate pension accounts in the following sections of the Scheme during the periods shown:-

Bedfordshire Pension Fund (**Bedfordshire**) 1998 - 2005
Northamptonshire Pension Fund (**Northamptonshire**) 2005 - 2016
Cambridgeshire Pension Fund (**Cambridgeshire**) 2016 - 2018

6. On 1 October 2018, NYPF wrote to Bedfordshire, Northamptonshire and Cambridgeshire asking for Ms N's benefit details.
7. On 9 October 2018, NYPF received Ms N's benefit details from Bedfordshire.
8. On the same day NYPF wrote to Ms N confirming that she had two options regarding the possible aggregation of the Bedfordshire benefits via a transfer into her new pension account with NYPF.
9. Attached to the letter was a 'Decision Regarding Combining Pension Rights form', (**the Bedfordshire decision form**), which set out Ms N's options as:-
- **Option 1** – I wish my deferred benefit with the Bedfordshire Pension Fund to be [aggregated].
 - **Option 2** – I do not wish my deferred benefit with the Bedfordshire Pension Fund to be [aggregated].
10. In the letter NYPF also said that if Ms N failed to make a decision within 12 months of re-joining the Scheme on 3 September 2018, her Bedfordshire account would remain separate.
11. On 15 January 2019, Ms N signed the Bedfordshire decision form and sent it to NYPF, having elected not to aggregate the Bedfordshire pension account.
12. On the same day NYPF received Ms N's benefit details from Northamptonshire and Cambridgeshire.
13. On 17 January 2019, NYPF sent two letters to Ms N, one relating to Northamptonshire and the other regarding Cambridgeshire. In summary NYPF said:-
- For each period of pensionable service relating to the Scheme, Ms N held a separate pension account.

- NYPF had received confirmation that Ms N held separate pension accounts with Northamptonshire/Cambridgeshire.
 - Under the Scheme Regulations, NYPF was required to aggregate the Northamptonshire/Cambridgeshire benefits with Ms N's NYPF retirement fund within 12 months of her joining, since benefits had been accrued after April 2014.
 - If Ms N did not wish for her retirement funds to be aggregated in this way, she would need to complete and return a 'decision form' provided with each letter. If no response was received by 3 September 2019, Ms N's retirement funds would be automatically aggregated as previously stated.
 - According to NYPF's records, Ms N's salary had reduced in comparison to her previous pay while with Northamptonshire. Calculation of Ms N's benefits accrued before April 2014 would be based on the subsequent full-time pay at her leaving date, or on retirement.
 - So, aggregation of her Northamptonshire retirement fund would currently reduce the benefits payable.
14. NYPF concluded the letter by providing contact details that Ms N could use if she required further information.
15. The two options quoted in the decision forms attached to each letter were:-
- Having considered the information provided I confirm I do not wish to have my pension account with [Northamptonshire/Cambridgeshire] and my current NYPF pension account [aggregated].
 - Having considered the information provided I confirm I do wish to have my pension account with [Northamptonshire/Cambridgeshire] [aggregated] with my current NYPF pension account and I wish to proceed with this immediately rather than wait the full 12 months.
16. On 22 January 2019, NYPF received the Bedfordshire decision form from Ms N.
17. On 3 September 2019, Ms N reached the 12-month deadline after re-joining the Scheme with NYPF, when automatic aggregation of the separate pension funds with Northamptonshire and Cambridgeshire was required, unless she had provided a decision to the contrary.
18. On 5 December 2019, NYPF wrote to Ms N confirming that her Northamptonshire pension fund had been transferred into her NYPF pension account.
19. On 19 December 2019, Ms N emailed NYPF and complained that:-
- She had returned the Bedfordshire decision form, and she did not think that it was necessary to respond to NYPF's letter of 17 January 2019.

- After her service with Northamptonshire, she had subsequently spent two years with Cambridgeshire and did not aggregate the two pension funds, as she considered this to be financially beneficial. She also kept her pension funds separate after moving from Bedfordshire to Northamptonshire for the same reason.
- So, upon joining NYPF she had three other separate pension accounts but subsequently claimed the Bedfordshire retirement pension in June 2019.
- NYPF's letter of 5 December 2019 which confirmed that the Northamptonshire pension fund had been transferred into NYPF caused her concern. She could not understand why NYPF was aggregating that pension fund, but the Cambridgeshire pension account was not also being treated in the same way.
- She would like her pension funds from Northamptonshire, Cambridgeshire and NYPF reinstated to their original separate status.
- The existing aggregated benefits with NYPF caused a financial loss when the last figures that she saw quoted on her separate Northamptonshire account were taken into account.

20. On 20 December 2019, NYPF emailed Ms N in response and said:-

- Ms N needed to make a separate election on the aggregation of each of her three previous pension accounts in the Scheme.
- The letter of 9 October 2018 was in connection with Bedfordshire only, as stated in the Bedfordshire decision form provided with the letter.
- The Scheme Regulations imposed a 12-month deadline for an election to be made, otherwise the pension fund would have remained with Bedfordshire by default. Ms N did elect to retain her deferred benefits with Bedfordshire, which was sent notification of that decision.
- In January 2019, two letters were sent to Ms N regarding Northamptonshire and Cambridgeshire, with a decision form attached to each letter, asking her to elect either aggregation or separate pension accounts. Both letters quoted a deadline of 3 September 2019, one year from Ms N joining NYPF, by which time she needed to make a decision.
- The Northamptonshire and Cambridgeshire pension accounts held post-1 April 2014 benefits. So, the Scheme Regulations required aggregation if elections were not made by the deadline. As no response was received from Ms N, the pension funds were requested from Northamptonshire and Cambridgeshire for aggregation with NYPF.

- The Scheme Regulations do not permit the reversal of the automatic aggregations in Ms N's case because no administrative errors were made.
21. On 24 December 2019, Ms N complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
22. On 7 January 2020, NYPF wrote to Ms N confirming that the Cambridgeshire pension fund had been transferred into the NYPF account.
23. On 21 February 2020, West Yorkshire Pension Fund, the local authority nominated to review NYPF IDRPs, wrote to Ms N in response to her complaint and said:-
- Ms N's previous pension accounts were covered by different Scheme Regulations as this was dependent on the date on which the period of membership ended.
 - Ms N's earliest period of service with Bedfordshire was covered by the 2014 Regulations, which provided that a member re-joining the Scheme with a new employer had to make a positive election within 12 months if the pension accounts were to be aggregated.
 - Ms N's periods of service with Northamptonshire and Cambridgeshire were subject to the 2013 Regulations, under which a member re-joining the Scheme with a new employer, automatically has their pension accounts aggregated, unless they had elected to keep them separate.
 - Accordingly, NYPF had offered the correct options to Ms N in relation to each of her previous periods of service in the Scheme.
 - Ms N stated that she only received one of the two letters that NYPF sent to her on 17 January 2019, regarding Northamptonshire, and not the letter on Cambridgeshire. However, both letters stated that NYPF was required to automatically aggregate her pension accounts, where benefits were accrued after 2014, unless she elected to the contrary by the deadline. Ms N had accrued benefits after 2014 with both Northamptonshire and Cambridgeshire.
 - So, having received the letter of 17 January 2019 regarding Northamptonshire, Ms N ought to have been aware that her Cambridgeshire pension fund would be treated in the same way.
 - As Ms N did not submit completed decision forms by 3 September 2019, stating that she wished to keep the Northamptonshire and Cambridgeshire pension accounts separate, NYPF was required to aggregate them.
 - Ms N's complaint was not upheld.
24. On 25 March 2020, Ms N appealed under stage two of the IDRPs and said:-

- The confusion caused by the communications she had received from NYPF had not been recognised.
- On 24 September 2018, she had completed a 'New Starter' form relating to her having recently joined NYPF. That form referred to all three of her other pension accounts.
- NYPF's letter of 9 October 2018 included the Bedfordshire decision form providing two options and stated that if she did not make an election, the related pension account would remain separate.
- Having only recently completed the 'New Starter' form regarding all three of her separate pension accounts, she incorrectly believed that the letter of 9 October 2018 also related to all three pension accounts, and not just Bedfordshire.
- It was possible that the Bedfordshire decision form that she sent back on 15 January 2019 prompted NYPF to send a letter regarding Northamptonshire.
- By then she was assuming that all three of her separate pensions' accounts would not be aggregated with NYPF and took no further action.
- She had not received NYPF's letter of 17 January 2019 regarding the Cambridgeshire account, only the other letter sent on the same day regarding Northamptonshire. In that letter NYPF said that under the regulations governing the Scheme, aggregation had to be processed if a contrary election had not been received within 12 months of re-joining the Scheme. Confusingly, this was different to NYPF's letter of 9 October 2018 regarding Bedfordshire, which stated that aggregation would not take place if an election was not received.

25. On 31 March 2020, NYPF wrote to Ms N in response and said:-

- Correspondence was sent to Bedfordshire, Cambridgeshire, and Northamptonshire on 1 October 2018, asking for her benefit details. NYPF could not provide any information to Ms N until each set of benefit details was received. Bedfordshire responded promptly, so the letter of 9 October 2018 was sent. Ms N's benefit details from both Cambridgeshire and Northamptonshire were subsequently received on 15 January 2019.
- The two letters of 17 January 2019 were then sent to Ms N regarding those pension accounts by the same person and would likely have been put in the same envelope. The Cambridgeshire and Northamptonshire pension accounts were covered by the 2013 Regulations, while Bedfordshire came under the 2014 Regulations. Consequently, it was not possible to provide a single letter regarding aggregation of Ms N's different pension accounts.

- Ms N would reasonably have been expected to query the letter of 17 January 2019 regarding Northamptonshire, if she believed that an election covering all three of her separate pension accounts had already been made.
- As Ms N's salary linked to NYPF increases over time, the reduction in retirement benefits compared to the last known pension payable from Northamptonshire decreases.
- NYPF has acted in accordance with the regulations governing the Scheme by aggregating Ms N's pension funds, since no response was received by the deadline.
- Ms N's complaint was not upheld.

Ms N's position

26. Ms N said:-

- She had thought that submission of the Bedfordshire decision form meant that none of the Bedfordshire, Northamptonshire and Cambridgeshire pension funds would be aggregated with NYPF.
- Had NYPF sent three separate letters on 9 October 2018, she would not have made this assumption.
- She only received notification of the Northamptonshire pension account being aggregated two days after submitting the Bedfordshire decision form on 15 January 2019. It is possible that returning the Bedfordshire decision form prompted NYPF to write to her regarding the Northamptonshire pension account on 17 January 2019.
- The letter of 17 January 2019 was contrary to the previous correspondence regarding the Bedfordshire pension account, which stated that aggregation would not be required if an election was not received.
- So, the communications that she received from NYPF were not sufficiently clear, partly due to the variations in the Scheme Regulations covering each of her pension accounts.

Adjudicator's Opinion

27. Ms N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NYPF. The Adjudicator's findings are summarised below:-

- There was no reference in the Bedfordshire decision form to either Northamptonshire or Cambridgeshire in those options. So, it should have been clear to Ms N that NYPF had only been referring to the Bedfordshire pension account. Ms N's failure to check this point with NYPF caused her to incorrectly

assume that she had also elected not to aggregate the Northamptonshire and Cambridgeshire pension accounts by submitting the signed Bedfordshire decision form.

- Following the information requests that were sent to Bedfordshire, Northamptonshire and Cambridgeshire on 1 October 2018, Bedfordshire provided the required benefit details to NYPF on 9 October 2018. In the Adjudicator's view it was this that enabled NYPF to send the letter of 9 October 2018. NYPF did not receive Ms N's Northamptonshire and Cambridge benefit details until 15 January 2019. So, it would not have been possible for NYPF to send all three letters regarding Ms N's options to her on 9 October 2018.
- NYPF said it could only send information to Ms N after receiving the benefit details of her other pension accounts. So, in the Adjudicator's opinion it was reasonable for NYPF to write to Ms N on 17 January 2019 regarding Northamptonshire and Cambridgeshire, having received the required benefit details two days earlier. It was this that prompted NYPF to send the letters to Ms N, rather than receipt of the Bedfordshire decision form.
- The Bedfordshire pension account was covered by the 2014 Regulations, which required a member re-joining the Scheme with a different employer to make a positive election within 12 months if the pension accounts were to be aggregated. The Northamptonshire and Cambridgeshire pension accounts were subject to the 2013 Regulations, which provided that a member re-joining the Scheme with a new employer automatically had their pension accounts aggregated, unless they had elected to keep them separate.
- NYPF's letter of 9 October 2018 regarding Bedfordshire and the two letters of 17 January 2019 regarding the Northamptonshire and Cambridgeshire pension accounts correctly set out Ms N's options in accordance with the applicable Scheme Regulations. The specific pension account that was being referred to was also quoted in each letter. So, in the Adjudicator's view the onus was on Ms N to raise enquiries with NYPF if she found this information unclear, but she failed to do so.
- NYPF's letter of 17 January 2019 regarding the Northamptonshire benefits confirmed the requirement to automatically aggregate pension accounts within 12 months of Ms N re-joining the Scheme, where benefits were accrued after 2014, unless she elected to keep them separate. In the Adjudicator's view, as Ms N had also accrued post-2014 benefits with Cambridgeshire, she ought to have been aware that the same regulation was also applicable to that pension account, even if she had not received the related letter.
- NYPF could not reasonably be held responsible for Ms N failing to make elections to prevent her pension accounts with Northamptonshire and Cambridgeshire being aggregated by the deadline of 3 September 2019. So, in the Adjudicator's

view there was no requirement for NYPF to now reverse the automatic aggregation of those pension accounts.

28. NYPF accepted the Adjudicator's Opinion, Ms N did not, and the complaint was passed to me to consider. Ms N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Ms N.

Ms N's additional comments

- Having submitted the Bedfordshire decision form, she remained unaware that her Northamptonshire benefits would be aggregated by NYPF, until she received the letter of 5 December 2019. Up to that point it had not been clear that there was any need to raise any further enquiries regarding that possibility.
- She believed that no action was required to maintain separate pension accounts with Northamptonshire and Cambridgeshire as had been the case with Bedfordshire.
- NYPF's letter of 17 January 2019 regarding the benefits accrued with Northamptonshire arrived two days after she had returned the Bedfordshire decision form. At the time she had believed that her decision to keep all three of her pension accounts separate from NYPF had already been notified. Consequently, she did not read the letter of 17 January 2019 carefully, in the belief that her decision to keep it separate had already been notified.
- It would have been appropriate for NYPF to contact her at this point, since not responding to the letter meant she had chosen a different option regarding the benefits accrued with Northamptonshire and Cambridgeshire particularly, given that aggregating the Northamptonshire benefits would lead to a financial loss.
- There were complexities caused by the variations in the Scheme Regulations applying to the three separate pension accounts with Bedfordshire, Northamptonshire and Cambridgeshire. So, responsibility for dealing with any discrepancies in the way those pension accounts were dealt with for aggregation purposes should have been shared with NYPF.

Ombudsman's decision

29. Ms N complained that NYPF has unreasonably aggregated her retirement benefits to include funds accrued during previous periods of pensionable service, causing her financial detriment.
30. Ms N submitted that NYPF's letter of 17 January 2019 regarding the benefits accrued with Northamptonshire arrived two days after she had returned the Bedfordshire decision form. She contends that at the time she had believed that her decision to

keep all three of the pension accounts with Bedfordshire, Northamptonshire and Cambridgeshire separate from NYPF had already been notified, having submitted the Bedfordshire decision form.

31. NYPF's letter of 17 January 2019 stated that the benefits Ms N had accrued with Northamptonshire, or Scheme benefits accrued after 2014 would be aggregated unless she elected to keep the pension accounts separate. I find that this response was appropriate, and in accordance with the applicable 2013 Regulations. Ms N has acknowledged that she did not read the letter carefully because she thought that having submitted the Bedfordshire decision form, no further action was required to also keep the Northamptonshire and Cambridgeshire pension accounts separate. I find that NYPF cannot reasonably be held responsible for Ms N making that assumption and not reading the relevant letter carefully.
32. Ms N said that it would have been appropriate for NYPF to contact her when she did not respond to the letter of 17 January 2019 as this meant she had chosen a different option regarding the benefits accrued with Northamptonshire and Cambridgeshire. There was no requirement for NYPF to contact Ms N or to provide financial advice on the options provided in the letters which clearly set out the options available to her. It was Ms N's responsibility to raise enquiries if she was unclear as to the implications of her decisions or if she found the information complex.
33. Ms N failed to make any such enquiry or submit decision forms by the deadline of 3 September 2019, notifying that she did not wish to aggregate the Northamptonshire and Cambridgeshire pension accounts. Consequently, I find that there is no requirement for NYPF to now reverse the automatic aggregation of those benefits.
34. I do not uphold Ms N's complaint.

Anthony Arter

Pensions Ombudsman
4 May 2022