

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mr Julian Stell
Scheme	Local Government Pension Scheme (LGPS)
Respondent(s)	Bedford Borough Council (Bedford BC)

Subject

Mr Stell's complaint stems from a request he made for early release of deferred benefits on compassionate grounds, in particular that Bedford BC:

1. failed to properly address his request for the release of his pension;
2. failed to deal with his complaint properly; and
3. failed to calculate interest correctly.

Mr Stell also says that the amount of compensation he has been paid is inadequate. He believes that he should receive more money in respect of the distress and inconvenience he has suffered as a result of the complaint.

The Pensions Ombudsman's determination and short reasons

Undoubtedly, there were failings with the way Bedford BC dealt with Mr Stell's complaints. Nevertheless, Bedford BC has largely acknowledged their shortcoming and these complaints are not upheld because Bedford BC has provided adequate redress for their mistakes.

Mr Stell should not receive additional money in consideration of his distress and inconvenience, because the amount he has already received is reasonable.

DETAILED DETERMINATION

Material Facts

1. Mr Stell worked for East Sussex County Council in the mid to late 1970s, before going to work for Bedfordshire County Council (**Bedfordshire CC**).
2. Mr Stell worked for Bedfordshire CC until 31 August 1998, when he left employment under the terms of a compromise agreement. The agreement did not make reference to Mr Stell's pension.
3. On 13 July 2000 Bedfordshire CC wrote to Mr Stell about his preserved benefits. The letter was headed "Local Government Pension Scheme Regulations 1995."
4. Bedfordshire CC ceased to exist on 1 April 2009 when unitary councils were introduced across Bedfordshire. Depending on the area concerned, all services previously hosted by the Bedfordshire CC were allocated to either Bedford BC or Central Bedfordshire Council. In Mr Stell's case, Bedford BC took over the responsibility as the LGPS employing authority and administering authority.
5. A report for Bedford BC's General Purpose Committee shows that the Management Group met to discuss LGPS discretions policy on 17 December 2009. Under the table below, two of the discretions listed related to early release of pension before Normal Retirement Date, and the early release of pension on compassionate grounds (without reduction for early payment) under 30(2) and 30(5) of LGPS (Benefits Membership and Contributions) Regulations 2007 (see the appendix to this Determination for details of 30(2) and 30(5)).

Discretion	Regulation	Proposed Unitary Policy	Bedford BC Policy Pre 2009	Bedfordshire County Council Policy pre 1 April 2009
Whether to grant application for early payment of benefits on or after age 55 and before age 60 (on or after age 50 until 31 March 2010)	30(2)	Bedford BC will exercise the employer's discretion where it is in the best interest of the Council to do so	The Council considered exercising this discretion where it believed it was in the Council's interests to do so or was justified on compassionate grounds. No criteria established to exercise discretion and therefore potential to apply unfairly	As per proposed policy
Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early	30(5)	Bedford BC will reserve the right to consider this in exceptional circumstances and the approval of any case to be in consultation by the Chief Executive, Chief Financial Officer (S151 Officer) and Assistant Chief Executive (HR/OD)	As per proposed policy	As per proposed policy

6. On 4 September 2011 Mr Stell wrote to Bedford BC to request early payment of his deferred benefits. The request was made on compassionate grounds, so that he could become a full time carer to his wife, who required dialysis treatment.
7. On 12 September 2011 Bedford BC's Employee Relation Manager forwarded Mr Stell's letter to the Assistant Director of Finance by email. The Assistant Director replied stating that she had discussed the matter with a named colleague (who I presume to be the Finance Director) and they considered that the request was not something that the Council could approve. She also commented:

“For future requests, it would be helpful to have a clear policy against which any such requests would be considered.”

8. On 14 September 2011 a Bedford BC Employee Relations Manager wrote to Mr Stell to inform him that his request had been declined, due to financial pressures associated with Local Authority budget cuts. The letter did not mention that Mr Stell could ask for this decision to be revisited by, in substance, raising a dispute under Internal Dispute Resolution Procedures (**IDRP**).
9. On 14 May 2012 Mr Stell wrote to Bedford BC to request a copy of council policy on early payment of deferred benefits. He also noted that the letter of 14 September 2011 did not advise him of his right to appeal.
10. On 25 May 2012 Bedford BC wrote to Mr Stell enclosing copy of the Local Government Pensions Regulations 2008 in relation to Discretions and Complaints Procedure. The cover letter stated the following.

“You will see under B30(2) and B30(5) that the Council has the discretion to make decisions on early release of pension on compassionate grounds... You will see that any complaint regarding this decision must be made within 6 months of being notified of the decision and this period of time has now elapsed.”

11. Mr Stell wrote to Bedford BC a further time on 1 June 2012. He said that if he had been informed of his right to appeal he would have submitted an appeal within the time allowed. He also said that Bedford BC failed to inform him of the right to seek assistance from the Pensions Advisory Service (**TPAS**), and the Office of the Pensions Ombudsman, and that this was a denial of his rights to natural justice. Furthermore, Mr Stell said that Bedford BC had failed to fully

explain the reasons for their decision, causing him to doubt that they had made a valid assessment of his circumstances.

12. Bedford BC replied to Mr Stell's letter of 1 June 2012 on 19 June 2012, confirming that Mr Stell did have the right to appeal and that an independent person had been appointed to investigate his complaint. The independent referee later wrote to Mr Stell (on 10 July 2012) under the heading of IDRPs and asked Mr Stell to complete a "Data Protection Form." The letter also said that a decision would be made within two months, or Mr Stell would be informed of the reason for the delay, and told Mr Stell about TPAS.
13. Mr Stell submitted information for consideration at IDRPs on 14 July and 2 August 2012. This included the Data Protection Form, which gave the appointed person permission to obtain information concerning the complaint. However, on 11 August 2012 Mr Stell wrote to Bedford BC to revoke the Data Protection Form and request that his complaint be accelerated to stage 2 of IDRPs.
14. Mr Stell had withdrawn his permission for the appointed person to investigate because of a letter the appointed person had written to the Assistant Chief Executive of HR on 18 July 2012. Mr Stell disagreed with the letter because he considered that the appointed person breached Data Protection Act principle 1 (processing personal data fairly and lawfully) / Data Protection Act principle 4 (keeping personal data accurate and up to date 4) and that the appointed person had prejudged the outcome of the investigation because he had made assumptions about Mr Stell's benefit entitlement.
15. In the letter to the Assistant Chief Executive the Appointed Person had written:

"Mr Stell has now requested early payment of his deferred benefits under regulation 31 of the Local Government Pension Scheme Regulations 1997, which applied from 1 April 1998."

Mr Stell disagreed with this statement because he says that he made his application under the 1995 regulations, not the 1997 regulations.
16. On 15 August 2012 Bedford BC wrote to Mr Stell to confirm receipt of his letter of 11 August 2012, which they had received on 15 August 2012. The letter was headed "Re: Rights to Natural Justice Complaint; Data Protection Act 1998 Complaint; LGPS IDRPs Stage 2 Appeal Request" and stated that the Chief Executive and Assistant Chief Executive would be looking into the matter and a reply would be forwarded to Mr Stell within 10 working days.

17. Bedford BC then wrote to Mr Stell on 10 September 2012 (18 working days later), to let him know that they were seeking legal advice, and that they would contact him again in due course.
18. On 11 October 2012, an internal Bedford BC email from the Assistant Chief Executive said that, on the basis of advice received it was clear that Bedford BC should release Mr Stell's pension on compassionate grounds, and that the pension should be backdated to September 2011.
19. On 15 October 2012 Bedford BC wrote to Mr Stell to let him know that, following legal advice, the Council had agreed to early release of his pension on compassionate grounds. In contrast to the previous two letters from Bedford BC (headed "Re: Rights to Natural Justice Complaint; Data Protection Act 1998 Complaint; LGPS IDRPs Stage 2 Appeal Request") this letter was simply headed "Subject Data Access Request". The letter further asked if, following on from the decision to grant his pension, Mr Stell still wished to carry on with his Subject Data Access Request.
20. Bedford BC wrote to Mr Stell to notify him of his award on 1 November 2012. Pension payments were to be backdated to 5 September 2011, without reduction for early payment. The lump sum retirement grant was said to include a payment of £2.00, representing interest for late payment.
21. Bedford BC wrote to Mr Stell on 7 November 2012 because there had been a miscalculation. Mr Stell was actually due interest of £40.08.
22. Following several letters from Mr Stell, Bedford BC sent another letter about interest on 28 November 2012. A figure of £196.78 was said to be due to Mr Stell.
23. On 6 December 2012 Bedford BC wrote to Mr Stell awarding an additional amount of £0.93, representing an extra day's interest. This was because interest had previously been calculated to 1 November 2012, whereas pension and lump sum payments were not actually credited to Mr Stell's account until a day later.
24. On 10 December 2012 Mr Stell wrote to Bedford BC concerning his complaint (and his subject access request). Bedford BC acknowledged this letter on 14 December 2012.
25. On 13 January 2013 Mr Stell applied to my office for assistance.

26. On 14 February 2013 my office wrote to the Bedford BC's Chief Executive, enclosing a copy of Mr Stell's application to us. The letter asked if Bedford BC intended to respond under stage 2 of IDRP.
27. Mr Stell hand delivered a letter to Bedford BC on 20 February 2013, which he followed by email, on 9 March 2013. Mr Stell's email was headed "Local Government Pension Scheme Regulations - Internal Dispute Resolution Procedure (IDRP) Stage 1 Appeal and Data Protection Act 1998 Subject Access Request"
28. Bedford BC Head of Corporate Policy replied to Mr Stell on 19 March and 19 April 2013. The 19 March email indicated that the Head of Corporate Policy had taken over the investigation and he expected to conclude his investigation by 19 April. Within the 19 April 2013 email, the Head of Corporate Policy apologised for the delay and stated would be submitting his findings to the Chief Executive by 23 April. Both emails contained "Re: Local Government Pension Scheme Regulations - Internal Dispute Resolution Procedure (IDRP) Stage 1 Appeal and Data Protection Act 1998 Subject Access Request" in the subject.
29. Bedford BC wrote to Mr Stell under stage 2 of IDRP on 2 May 2013. Mr Stell's complaints were partially upheld and Bedford BC undertook to pay Mr Stell £750 in compensation. They said:

"The matter has now been fully investigated and I would confirm that the handling of your case has fallen well short of what is expected by the Council and for this I offer my sincere apologies. In summary, some difficulties appear to have arisen due to it initially being unclear as to which pension regulations applied to you. The evidence you have supplied indicated that it is the 1995 Regulations and not the 1998 Regulations. This difficulty does not, however, excuse the Council from how it has handled the matter.

On further analysis of your letter of 18 March I see your complaint as covering four substantive matters:

- Failure to determine appropriately your request for early release of your pension benefits (points 1-13).

This issue of the complaint is upheld

- Failure to deal with your complaint effectively (points 14-19) [except 16].

This issue of complaint is partially upheld. Although the council failed to advise you of your IDRP appeal rights, the stage 1 IDRP independent person was appointed in a timely fashion. However, the council did not deal with the Stage 2 IDPR request in an appropriate manner.

- Failure to calculate interest payments correctly (point 20) [actually refers to point 16] This issue of complaint is partially upheld. Initially the council did not calculate interest payments correctly. However, this matter was resolved in a timely manner and an apology was offered. I do not consider any further remedy would be appropriate...

As noted above the Council's response to this matter has fallen far short on what could reasonably be expected, one again please accept my apology for these failings. In addition whilst I do not accept that there has been any legal liability as such by the Council to you, in view of the failings mentioned I will arrange for a payment to be made to you of £750."

Summary of Mr Stell's position

30. Mr Stell has made a number of complaints, not all of which are within my remit. When Mr Stell wrote to Bedford BC on 18 March 2013, he made 21 points, which, for the purposes of handling the complaint at stage 2 of IDRP, were grouped into four areas. Three of the four areas then formed the basis of the complaint accepted for investigation by my office. For administrative purposes, I have grouped Mr Stell's complaints and background information under the three headings, but they are neither in the format or quantity they appear on Mr Stell's 18 March 2013 letter or his correspondence with my office, because I am unable to address all of his concerns.
31. More recently Mr Stell has written with 151 numbered points in support of his complaint. I have not responded to those points separately or in detail. It is neither necessary nor proportionate to the real issues for me to do so.
32. In addition, my office considers complaints and disputes from individuals about matters that affect them directly. I cannot widen the investigation to include people who have not complained, nor do I have broad regulatory powers with which to make wide-ranging changes to the way that pension schemes operate.
33. Mr Stell has raised a number of issues surrounding his subject access request to Bedford BC. That is a matter better left to the Information Commissioner, who has in fact dealt with it.

Failure to properly address the request for early release of pension

34. Bedford BC initially failed to properly consider his application for early release of pension on compassionate grounds due to his personal circumstances.

35. Bedford BC failed in their duty (as required by LGPS regulations) to establish a valid set of discretionary policies, that would secure just administration of all of the LGPS discretionary powers.
36. During the consideration of his application and during the complaints process Bedford BC made reference to an invalid set of LGPS regulations. Mr Stell says that his pension is preserved under the 1995 regulations and this is evidenced by his compromise agreement and the letter he received from Bedfordshire CC on 3 July 2000.
37. Bedford BC failed to provide him with a copy of the legal advice they received prior to granting early release of his pension.

Failure to deal with the complaint properly

38. When Bedford BC first informed him of their initial decision (letter dated 14 September 2011) they failed to tell him that he could invoke IDRPs.
39. He was initially unable to challenge Bedford BC's first instance decision because he had to devote all of his time learning about how to care for his wife at home - involving operating a dialysis machine five days a week. Bedford BC's decision greatly added to his distress.
40. Bedford BC further failed to afford him the right of appeal, on 25 May 2012, when they said his appeal was out of time.
41. Bedford BC failed to comply with its obligations under section 50, 50A and 50B of the Pensions Act 1995, regulations 97 and 98 of LGPS 1997.
42. The IDRPs stage 1 decision was made on 11 October 2012, as shown by the email from the Assistant Chief Executive of that date and communicated to him within the letter of 15 October 2012.
43. He did not receive a copy of the Head of Corporate Policy's findings (referred to in emails of 19 March and 19 April 2013), which were used for the stage 1 IDRPs decision.

Failure to calculate interest payments correctly

44. His pension should have been backdated to 4 September 2011 (the date of his initial letter) and not 5 September 2011, as Bedford BC have calculated his entitlement from. Likewise interest should also have been calculated from 4 September 2011.
45. Due to mistakes, Bedford BC made four calculations of interest payments, and (aside from being owed a day's interest) he has no faith that that the final calculation is correct.
46. Mr Stell does not consider the statutory interest rate set by LGPS regulations provides adequate compensation. Had he invested his pension and lump sum in a savings account over the period, he would have received significantly more interest.

Compensation

47. He does not believe that the £750 in compensation provided by Bedford BC adequately reflects for the significant detriment, distress and inconvenience caused by their maladministration. Mr Stell believes £1,500 to be a more appropriate amount. (He also says that he has not banked the cheque and it would need to be reissued.)

Summary of Bedford BC's position

48. As stated in paragraph 29, Bedford BC accept that their handling of Mr Stell's case fell short of what it should have been.
49. Bedford BC upheld the complaint that they failed to properly address Mr Stell's request for the release of his pension.
50. Bedford BC partially upheld the complaint that they failed to deal with Mr Stell's complaint properly - in that although they failed to advise Mr Stell of his rights under IDRPs and deal with the complaint appropriately at stage 2 if IDRPs, the stage 1 independent person was appointed in good time.
51. Mr Stell's complaint about the calculation of interest was also partially upheld because although there was an issue they considered that the matter was resolved in a timely fashion.
52. On the subject of interest, and within a letter of 30 January 2014, Bedford BC said the following, in response to a request from my office:

“Pursuant to regulation 44 of the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/39) interest on the two payments was calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests. The bank base rate was 0.5%.”

Conclusions

Failure to properly address the request for early release of pension

53. Any application for early release of pension benefit should be considered in the context of the LGPS regulations. Mr Stell says Bedford BC failed to formulate discretionary policies in relation to regulation D11(2)(c) of the 1995 regulations. But these regulations are superseded.
54. The Local Government Pension Scheme Regulations 1997 regulations came into force on 1 April 1998. So too did The Local Government Pension Scheme (Transitional Provisions) Regulations 1997 (**the 1997 Transitional Provisions**). Regulation 3 of the Transitional Provisions (see the appendix of this determination) said that the old provisions (meaning the 1995 regulations) ceased to apply for active members immediately before 1 April 1998. Since Mr Stell was an active member of LGPS until he left employment on 31 August 1998, his entitlement arose under the 1997 scheme.
55. Had Mr Stell been a deferred member on 1 April 1998 then, as specified by regulation 4(1) of the 1997 Transitional Provisions, certain parts of the 1995 regulations (termed “common provisions and “saved provisions”) would applied to him, but this was not the case. Under regulation 6 of the 1997 Transitional Provisions, Mr Stell was only entitled to bring forward his previous service credit, so that it would count towards his pension as a whole, along with any service credit earned under the 2008 scheme.
56. On 1 April 2008 the 2008 regulations came into force, including The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (**the 2008 Transitional Provisions**). Under regulation 2 of the 2008 Transitional Provisions the 1997 regulations were revoked. Regulation 3 of the 2008 Transitional Provisions applied to active members and said that an active member’s pension became subject to the 2008 regulations for future accrual (any pension accrued before 1 April 2008 was preserved under the 1997 regulations). Regulation 4 of the 2008 Transitional Provisions dealt with deferred members of

the 1997 scheme and said that deferred members could give written notice if they wished to become part of the 2008 scheme. As Mr Stell did not give written notice, he continued to be a deferred member of the 1997 scheme.

57. It is not clear why, in the stage 2 IDRPs letter, Bedford BC said that it was the 1995 regulations that applied to Mr Stell.
58. The compromise agreement that was drawn up when Mr Stell left employment does not make reference to Mr Stell's pension, but even if it had, it would not overrule the statutory regulations.
59. In July 2000 Mr Stell received a letter from Bedfordshire CC, which was headed "Local Government Pension Scheme Regulations 1995." This does not mean that Mr Stell's pension was preserved under the 1995 regulations. It was simply a mistake by the letter's author.
60. Under the 1997 regulations, regulation 106 says that authorities must formulate and review policies concerning the exercise of functions conferred under (among others) regulation 31. Regulation 31(2) states that members who want to retire before the age of 60 may only do so with the consent of the former employer. Regulation 31(5) gives the employer discretion to determine, on compassionate grounds, that a member's pension should not be reduced for early retirement.
61. There are equivalent (identically worded) provisions under the 2007 / 2008 regulations. However regulation 106 appears at number 66 of the Local Government Pension Scheme (Administration) Regulations 2008, and the equivalent regulation 31 appears at 30 / 30A of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.
62. The report for Bedford BC's General Purpose Committee concerning the 17 December 2009 discussions shows that Bedford BC formulated and reviewed policies in accordance with the regulations; and two of the discretions under review were regulation 30(2) and 30(5) of the 2007 Benefits, Membership and Contributions regulations. Discretions under regulation 31 of the 1997 legislation were not discussed.
63. Since the wording 31(2) and 31(5) of the 1997 regulations are identical to 30(2) / 30(5) (and 30A(2) / 30A(5) for deferred members) of the 2007 Benefits, Membership and Contributions regulations, Bedford BC could have been expected to come to an identical decision about the discretions under 31 of the

1997 regulations. So there was no need to consider the 1997 regulations separately.

64. Bedford BC eventually decided to agree to Mr Stell's application, following the receipt of legal advice. Mr Stell asked for a copy of the legal advice but his request was turned down. However, since the information is legally privileged, Bedford BC were entitled to decline the request.
65. Since Bedford BC has upheld this complaint, it is clear Bedford BC consider they did not conduct a proper exercise of discretion. Bedford BC should have formulated clear policies / established criteria to assist them in making decisions such as these.

Failure to deal with the complaint properly

66. Mr Stell has said that Bedford BC failed to comply with its obligations under section 50, 50A and 50B of the Pensions Act 1995, and regulations 97 and 98 of LGPS 1997 (see appendix).
67. In relation to the Pensions Act 1995 I should briefly explain that:
 - section 50 sets out that the Trustees or managers of an occupational pension scheme must secure dispute resolution arrangements, in relation to disputes between Trustees / Managers and one or more persons with an interest in the scheme;
 - regulation 50A provides the definition of "a person with an interest in the scheme" (which includes members of the Scheme); and
 - 50B sets out provisions that the dispute resolution procedures must include, and that dispute resolution applies to a person with an interest in the scheme.
68. Bedford BC have appropriate dispute resolution arrangements in place; I do not consider that those sections of the Pensions Act 1995 have not been complied with. (They do not deal with whether the arrangements have operated efficiently in any particular case.)
69. In relation to the 1997 LGPS regulations:
 - Regulation 97 concerns first instance decisions and provides that any question about liability must be decided by the appropriate administering authority, as soon as practically possible.

- Regulation 98 deals with notification of decisions under regulation 97 and provides that members must be notified of a decision in writing, including details of rights to raise a disagreement under the IDR (conferred under regulations 100 and 102) and the time limit in which those rights may be exercised (six months).
- Regulation 101 says (among other things) that members must be notified of the specified person's decision (under regulation 100 / stage 1 of IDR), within two months after the application was received; or if this is not possible, the applicant must be notified of the reason for the delay. Notification of the decision must make reference to any legislation relied upon, and in the case where the disagreement relates to an exercise of discretion, reference must be made to "... the provisions of the Scheme conferring the discretion" (the discretions policy); and that members can ask for the decision to be examined again under regulation 102 (stage 2 of IDR).
- Regulation 102 says that members must be notified of the stage 2 decision within two months after the application was received; or if this is not possible, the applicant must be notified of the reason for the delay. The decision letter must contain
 - i. a statement of the decision;
 - ii. reference to any legislation or provisions of the Scheme relied upon;
 - iii. reference to the provisions of the Scheme conferring the discretion;
 - iv. a reference to the rights of the applicant to refer the disagreement for reconsideration by the appropriate administering authority (in this case the Pensions Ombudsman) specifying the time within which they may do so; and
 - v. a statement that TPAS is available to assist members.

70. Bedford BC's letter of 14 September 2011, in which Mr Stell was notified that his application had been refused, explained why the application had been turned down (due to cost), but did not explain that Mr Stell could raise a disagreement

under IDRP, if he applied within six months. This is contrary to regulation 98 of the 1997 LGPS regulations.

71. Mr Stell says that he was further denied the right to appeal when Bedford BC wrote to him, on 25 May 2012, to say that his appeal was out of time. Mr Stell was outside the 6 months permitted at that point but Bedford BC should have realised that was through their own fault. However, since Bedford BC went on to permit the IDRP application, he has been able to fully exercise his rights.
72. Regulation 101 1997 LGPS regulations does not apply because Mr Stell asked for his complaint to bypass stage 1 of IDRP and proceed to stage 2. However, Mr Stell is of the opinion that this request was not accepted. He says that the stage 1 IDRP decision was communicated to him on 15 October 2012.
73. The letter of 15 October 2012 (in which Bedford BC said that they had revised their decision), was not a stage 1 IDRP decision letter. Nowhere within the letter did it say that it was.
74. When Bedford BC wrote to Mr Stell on 15 August 2012, they confirmed receipt of the letter in which Mr Stell had requested that his complaint proceed to stage 2, and stated that the Chief Executive and Assistant Chief Executive would be looking into the matter. The letter was headed "Re: Rights to Natural Justice Complaint; Data Protection Act 1998 Complaint; LGPS IDRP Stage 2 Appeal Request" so Mr Stell could have reasonably inferred (from the last part of the heading) that his request had been accepted. But for the avoidance of doubt, the body of the letter could have explicitly said that the matter was proceeding to stage 2.
75. Mr Stell points out that the emails from the Head of Corporate Policy of 19 March and 19 April 2013 were headed "Local Government Pension Scheme Regulations - Internal Dispute Resolution Procedure (IDRP) Stage 1 Appeal and Data Protection Act 1998 Subject Access Request." But these emails were replies to Mr Stell's email of 20 February 2013, which was headed in this way. The subject of the subsequent replies would automatically read the same unless altered.
76. Further, on the subject of the 19 March and 19 April 2013 emails, Mr Stell says that Bedford BC failed to provide him with the Head of Corporate Policy's findings, as referred to within those emails. But in terms of statutory duties Bedford BC were obliged to provide Mr Stell with a stage 2 decision letter, they

were not obliged to provide him with internal documents leading up to the IDRPs stage 2 decision.

77. Once Bedford BC had received Mr Stell's request to proceed to stage 2 of IDRPs (on 15 August 2012), under regulation 102, they should have replied to Mr Stell within two months or explained why a response could not be supplied.
78. There may have been an assumption that the decision to grant the pension (communicated to Mr Stell on 15 October 2012) signalled the end of the complaint but Bedford BC did not confirm this with Mr Stell. The letter of 15 October 2013 asked Mr Stell if he still wished to carry on with his subject access request; he was not asked if he wished to carry on with his complaint.
79. Following Mr Stell's IDRPs stage 2 request a number of additional letters were sent, including one from my office, before a stage 2 reply was supplied on 2 May 2013. The letters should not have been necessary and despite certain complications in this case, a reply should have been supplied long before May.
80. Bedford BC could have attempted to draft the stage 2 IDRPs response after the final amount of interest was calculated on 6 December 2012. Had they done this, Bedford BC could reasonably have supplied a response around the turn of the new year.

Failure to calculate interest payments correctly

81. Mr Stell disagrees with the rate of interest applied to his pension. The level of interest awarded is however restricted to the rates specified within the regulations.
82. Bedford BC say that they applied interest in line with regulation 44 of the 2008 administration regulations but the 2008 regulations do not apply to Mr Stell.
83. Interest should be awarded to Mr Stell under regulations 94(1) and 82(2) of the 1997 LGPS regulations.
84. Nonetheless, regulations 44(4) of the 2008 administration regulations and 82(2) of the 1997 regulations both say that interest should be calculated at 1% above the Bank of England base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests. Therefore, Bedford BC have correctly calculated the amount of interest payable to Mr Stell.

85. That said Bedford BC did not initially apply interest correctly. It was only at the insistence of Mr Stell that several recalculations were made. This was maladministration.
86. Mr Stell initially applied for his pension by letter on 4 September 2011 and so the earliest Bedford BC would have received his letter is 5 September 2011. Pension entitlement and interest payments should be backdated to the date Bedford BC received the application i.e. 5 September 2011, rather than the date of Mr Stell's letter. Therefore, Bedford BC have calculated interest from the correct date.

Compensation

87. The main cause of Mr Stell's original complaint has been remedied because he has received early payment of his pension benefits, backdated to when Bedford BC received his application in September 2011. But the process of obtaining his benefits was not as straightforward as it could have been, because his application was mishandled. Furthermore, there were a number of failures in the way interest was calculated and the way that the complaint was dealt with.
88. I consider that will have caused Mr Stell some distress and inconvenience. My awards in respect of "distress and inconvenience" are usually modest. The Courts have, in the past, said that only exceptionally should they exceed £1,000. That was some time ago, but awards above that amount remain rare. The £750 paid to Mr Stell is, therefore, at the higher end of amounts usually awarded, and in my opinion adequately reflects the various complications and fact that the complaint took place over an extended period, from September 2011 to October 2012.
89. I therefore do not uphold Mr Stell's complaints. There were mistakes, but Bedford BC have made adequate redress. (If Mr Stell has not banked the cheque and it is no longer in his possession, he may ask for it to be reissued.)

Tony King
Pensions Ombudsman

11 December 2014

Appendix - Regulations

The Local Government Pension Scheme Regulations 1997 (As Amended)

Other early leavers: deferred retirement benefits and elections for early payment

31. (1) If a member leaves a local government employment (or is treated for these regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 50 or more he may elect to receive payment of them immediately.
- (2) An election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).
- (3) If the member elects, he is entitled to a pension and retirement grant payable immediately.
- (4) his retirement pension and grant must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary (but see paragraphs (5) and (6) and regulation 36(5) (GMPs)).
- (5) A member's appropriate employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).

Interest

82. (2) Interest under paragraph (1) paragraphs (1) or (1A) or under regulation 87(2A), 89(5) or 94 must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

Interest on late payment of certain benefits.

94. (1) Where all or part of a pension or lump sum payment due under these Regulations or the 1995 regulations is not paid within the relevant period after the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable- calculated from the due date as provided in regulation 82(2).

First instance decisions

97. (1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.
- (3) That decision must be made as soon as is reasonably practicable after the earlier of the date the employment ends or the date specified in the notification mentioned in regulation 8(3)

Notification of decisions under regulation 97

98. (1) Every person whose rights or liabilities are affected by a decision under regulation 97 must be notified of it in writing by the body who made it as soon as is reasonably practicable
- (5) Every notification must also-
- (a) refer to the rights available under regulations 100 and 102,

- (b) specify the time limits within which the rights under those regulations may be exercised, and
- (c) specify the job title and the address of the person to whom applications under regulation 100 may be made.

Notice of decisions under regulation 100

101. (1) A decision on the matters raised by an application under regulation 100 must be issued by the person deciding the disagreement -
- (a) to the applicant,
 - (b) to the Scheme employer, and
 - (c) if the Scheme employer is not the appropriate administering authority, to that authority, by notice in writing before the expiry of the period of two months beginning with the date the application was received.
- (2) But, if no such notice is issued before the expiry of that period, an interim reply must immediately be sent to those persons, setting out the reasons for the delay and an expected date for issuing the decision.
- (3) A notice under paragraph (1) must include-
- (a) a statement of the decision;
 - (b) a reference to any legislation or provisions of the Scheme relied upon;
 - (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
 - (d) a reference to the rights of the applicant to refer the disagreement for reconsideration by the appropriate administering authority under regulation 102, specifying the time within which they may do so; and
 - (e) a statement that OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with any difficulty with the Scheme which remains unresolved and the address at which OPAS may be contacted.

Reference of disagreement to the appropriate administering authority

102. (1) Where an application about a disagreement has been made under regulation 100, an application may be made to the appropriate administering authority to reconsider the disagreement by the person who applied under regulation 100.
- (2) The application must set out particulars of the grounds on which it is made, including a statement that the applicant under this regulation wishes the disagreement to be reconsidered by the appropriate administering authority.
- (3) An application made by the person who applied under regulation 100 must set out the matters required by paragraph (4) or, as the case may be, paragraph (5) of that regulation to be included in his application.
- (4) The application must be accompanied by a copy of any written notification issued under regulation 98.
- (5) Where notice of a decision on the application under regulation 100 has been issued, the application under this regulation must state why the applicant is dissatisfied with that decision and be accompanied by a copy of that notice.

- it.
- (6) The application must be signed by or on behalf of the person making
 - (7) An application for reconsideration may only be made before the expiry of the period of six months beginning with the relevant date.
 - (8) Where notice of a decision on the matters raised by the application under regulation 100 has been issued, the relevant date is the date of that notice.
 - (9) Where-
 - (a) an interim reply has been sent under regulation 101(2), but
 - (b) no notice of decision has been issued before the expiry of the period of one month beginning with the date specified in the reply as the expected date for issuing the decision, the relevant date is the date with which that period expires.
 - (10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of three months beginning with the date the application under regulation 100 was made, the relevant date is the date with which that period expires.

Statements of policy concerning exercise of discretionary functions

106. (1) Each administering authority and Scheme employer must formulate and keep under review their policy concerning the exercise of their functions under regulation 31 (early leavers), 35 (requirements as to time of payment) and under Part III.

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

Choice of early payment of pension

30. (1) If member leaves a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he has attained the age of 55 he may choose to receive payment of them immediately.
- (2) A choice made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).
- (3) If the member elects, he is entitled to a pension and retirement grant payable immediately.
- (4) his retirement pension and grant must be reduced by the amounts shown as appropriate in [guidance issued by the Government Actuary](#) (but see paragraphs (5) and (6) and [regulation 36\(5\)](#) (GMPs)).
- (5) A member's employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).

Choice of payment of pension: pensioner member with deferred benefits

- 30A. (1) Where a member who is treated as a pensioner member with deferred benefits under [regulation 20\(9\)](#) (“a regulation 20(9) member”), has reached the Scheme’s normal retirement age, he or she is entitled to immediate payment of his or her retirement pension without reduction.

(2) Subject to paragraphs (3) and (4), a regulation 20(9) member may upon reaching the age of 55, choose to receive payment of his or her retirement pension immediately.

(3) A choice made by a member aged less than 60 is ineffective without the consent of the member's former employing authority.

(4) Subject to paragraph (5), the member's pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.

(5) The member's former employing authority may determine on compassionate grounds that the member's retirement pension should not be reduced under paragraph (4).

The Local Government Pension Scheme (Administration) Regulations 2008

Interest

44. (1) An administering authority may require an administering or employing authority from which payment of any amount due under regulations 39 to 42 (employers' contributions or payments) or regulation 86 (changes of fund) is overdue to pay interest on that amount.

(2) The date on which any amount due under regulations 39 to 41 is overdue is the date one month from the date specified by the administering authority for payment.

(3) The date on which any amount due under regulation 42 (other than any extra charge payable under regulation 40 or 41 and referred to in regulation 42(1)(c)) is overdue is the day after the date when that payment is due.

(4) Interest due under paragraph (1) or payable to a person under regulation 45(5) (deduction and recovery of member's contributions), 46(2) (rights to return of contributions) or 51 (interest on late payment of certain benefits) must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

(5) Interest on any amount due in respect of regulation 86 shall be calculated in accordance with guidance issued by the Government Actuary.

66. (1) Each employing authority must prepare a written statement of its policy in relation to the exercise of its functions under regulations 12 (power of employing authority to increase total membership of active members), 13 (power of employing authority to award additional pension), 18 (flexible retirement) and 30 (choice of early payment of pension) of the Benefits Regulations.

(2) Before the expiry of the period of three months beginning with the commencement date, each employing authority must send a copy of its statement to each relevant administering authority and must publish its statement.

(3) An employing authority must—

(a) keep its statement under review; and

- (b) make such revisions as are appropriate following a change in its policy.

Pensions Act 1995

Requirement for dispute resolution arrangements

50. (1) The trustees or managers of an occupational pension scheme must secure that dispute resolution arrangements complying with the requirements of this section are made and implemented.
- (2) Dispute resolution arrangements are arrangements for the resolution of pension disputes.
- (3) For this purpose a pension dispute is a dispute which-
- (a) is between-
 - (i) the trustees or managers of a scheme, and
 - (ii) one or more persons with an interest in the scheme (see section 50A),
 - (b) is about matters relating to the scheme, and
 - (c) is not an exempted dispute (see subsection (9)).
- (4) The dispute resolution arrangements must provide a procedure-
- (a) for any of the parties to the dispute mentioned in subsection (3)(a)(ii) to make an application for a decision to be taken on the matters in dispute ("an application for the resolution of a pension dispute"), and
 - (b) for the trustees or managers to take that decision.

Meaning of "person with an interest in the scheme"

- 50A (1) For the purposes of section 50 a person is a person with an interest in an occupational pension scheme if-
- (a) he is a member of the scheme,
 - (b) he is a widow, widower, surviving civil partner or surviving dependant of a deceased member of the scheme,
 - (c) he is a surviving non-dependant beneficiary of a deceased member of the scheme,
 - (d) he is a prospective member of the scheme,
 - (e) he has ceased to be within any of the categories of persons referred to in paragraphs (a) to (d), or
 - (f) he claims to be such a person as is mentioned in paragraphs (a) to (e) and the dispute relates to whether he is such a person...

The dispute resolution procedure

- 50B (1) The procedure provided for by the dispute resolution arrangements in pursuance of section 50(4) must (in accordance with section 50(6)) include the following provision.
- (2) The procedure must provide that an application for the resolution of a pension dispute under section 50(4) may be made or continued on behalf of a person who is a party to the dispute mentioned in section 50(3)(a)(ii)-
- (a) where the person dies, by his personal representative,
 - (b) where the person is a minor or is otherwise incapable of acting for himself, by a member of his family or some other person suitable to represent him, and

(c) in any other case, by a representative nominated by him.

(3) The procedure-

(a) must include provision requiring an application to which subsection (3A) applies to be made by the end of such reasonable period as is specified;

(b) may include provision about the time limits for making such other applications for the resolution of pension disputes as are specified.

(3A) This subsection applies to-

(a) any application by a person with an interest in a scheme as mentioned in section 50A(1)(e), and

(b) any application by a person with an interest in a scheme as mentioned in section 50A(1)(f) who is claiming to be such a person as is mentioned in section 50A(1)(e).

(4) The procedure must include provision about-

(a) the manner in which an application for the resolution of a pension dispute is to be made,

(b) the particulars which must be included in such an application, and

(c) the manner in which any decisions required in relation to such an application are to be reached and given.

The Local Government Pension Scheme (Transitional Provisions) Regulations 1997

Preliminary provisions

Citation, commencement and extent

1. (1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions) Regulations 1997.
- (2) They shall come into force on 1st April 1998.
- (3) They shall apply to the Isles of Scilly as if they were a district in the county of Cornwall and the council of the Isles of Scilly were a council of that district.

Interpretation

2. (1) In these Regulations -
 - "the 1997 provisions" means the 1997 regulations, these Regulations and the Investment Regulations;
 - "the 1997 regulations" means the Local Government Pension Scheme Regulations 1997^[2];
 - "the commencement date" means 1st April 1998;
 - "the common provisions" means regulations 49 and 50 and Part IV of the 1997 regulations and the Investment Regulations;
 - "the Investment Regulations" means regulations L4 to L8 of the 1995 regulations;
 - "the old provisions" means the 1995 regulations, the additional regulations specified in Schedule I (so far as they relate to the Scheme) and any other regulations relating to the Scheme and made under section 7 or 12 of the Superannuation Act 1972, so far as they continue in effect;
 - "the replaced provisions" means regulations C1, C21, H1, H3 to H7, M4, M5, M6 and Parts J, K and L of and Schedules C1, K1, K2 and L1 to the 1995 regulations (but not including the Investment Regulations);

"the saved provisions" means the old provisions (other than the replaced provisions), in so far as they remain capable of having effect and subject to the provisions of these Regulations and, in particular, the amendments specified in Schedule 3.

Application of 1997 regulations and old provisions

Cessation of old provisions for active members

3. (1) Any person who is an active member of the Scheme immediately before the commencement date shall continue to be an active member on that date and, subject to the provisions of these Regulations, the old provisions shall cease to apply to him.
 - (2) Paragraph (1) shall not apply to any person who ceases to be an active member on March 31st 1998 -
 - (a) by virtue of regulation B12 of the 1995 regulations (leaving the Scheme), or
 - (b) by virtue of leaving local government employment on that date and becoming a pensioner member on the commencement date, and these Regulations shall apply to any such person as if he had already so ceased immediately before the commencement date.
 - (3) If any person has notified his employer under regulation B12(2) of the 1995 regulations before the commencement date that he wishes to cease to be an active member, but would not (apart from this paragraph) have ceased to be an active member immediately before the commencement date -
 - (a) paragraph (1) shall not apply to him,
 - (b) he shall cease to be such a member on March 31st 1998, and
 - (c) these Regulations shall apply to him as if he had already so ceased immediately before the commencement date.

Deferred members and pensioners: general

4. (1) Except where these Regulations provide otherwise, in relation to the specified in paragraph (2) -
 - (a) the saved provisions shall continue to apply,
 - (b) the common provisions shall apply, and
 - (c) Part II (except regulations 49 and 50) and Parts III and V of the 1997 regulations shall not apply (except in so far as they affect the common provisions).
- (2) Those persons are -
 - (a) any person who immediately before the commencement date was a deferred member or a pensioner member and does not on or after that date become an active member;
 - (b) any person who is or may become entitled to any benefit under the Scheme in respect of such a person;
 - (c) any other person whose entitlement to the payment of any pension or other benefit has arisen before that date or who may become so entitled by virtue of the death of any person who has died before that date.

Entitlement of active members to count old membership

6. Any person who continues as an active member of the Scheme on commencement date by virtue of regulation 3 may count for regulation 9(1)(d) of the 1997 regulations the same length of membership as the total period he was entitled to count under the old provisions immediately before that date (but see regulations 8 to 13 and Schedule 2).

The Local Government Pension Scheme (Transitional Provisions) Regulations 2008

1. (1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions) Regulations 2008.
- (2) These Regulations apply in relation to England and Wales.
- (3) These Regulations shall come into force as follows—
- (a) regulation 8 on 10th March 2008; and
- (b) the remainder on 1st April 2008.
- (4) In these Regulations—
- “the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997;
- “the 1997 Scheme” means the occupational pension scheme constituted by the 1997 Regulations;
- “the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008;
- “the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and
- “the Scheme” means the Local Government Pension Scheme 2008 constituted by these Regulations, the Benefits Regulations and the Administration Regulations
2. (1) Except where these Regulations provide otherwise, the Regulations listed in [Schedule 1](#) are revoked.
- (2) Accordingly, no person may become a member of the 1997 Scheme after 31st March 2008 or accrue benefits in it in respect of any service after that date.
3. (1) This regulation applies to a person who was an active member of the 1997 Scheme and becomes a member of the Scheme by virtue of [regulation 2 of the Benefits Regulations](#).
- (2) Notwithstanding the revocations effected by [regulation 2](#), the regulations listed in [the Schedule](#) continue to have effect, subject to [regulation 4](#), so far as is necessary so that—
- (a) The person’s total membership accrued in the 1997 Scheme in respect of, or calculated by reference to, his service before 1st April 2008, and the pension rights accrued at that date, are preserved; and
- (b) his benefits under the 1997 Scheme are payable immediately where benefits become payable without reduction under regulations [16](#), [17](#), [19](#), [20](#) and [31](#) of the Benefits Regulations, or with the appropriate actuarial reduction in line with [guidance produced by the Government Actuary](#) where benefits become payable under regulations [18](#) or [30](#) of the Benefits Regulations.

(3) But his pay, for the purposes of any calculation of benefits under paragraph (2), is calculated in accordance with [regulations 8 to 11 of the Benefits Regulations](#).

4. (1) This regulation applies to a person—
- (a) who was a deferred member of the 1997 Scheme;
 - (b) who becomes a member of the Scheme by virtue of [regulation 13 of the Administration Regulations](#); and
 - (c) whose preserved benefits under the 1997 Scheme have not yet come into payment.
- (2) He may choose, by notice in writing to the appropriate administering authority within 12 months of becoming a member of the Scheme under paragraph (1)(b), to be treated as if [regulation 3](#) applied.