

Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme (LGPS)
Respondents	Buckinghamshire County Council (BCC)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by BCC.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N's complaint is that she says she was not properly informed of the implications of selecting to preserve her two periods of service in the LGPS. As a result, following redundancy, her benefits have only been based on her last period of service and are therefore less than what she says she is entitled to. Mrs N's argument is that it was never made clear to her the implications of her decision in 1998 and she feels strongly that BCC's letter was not clear enough or provided sufficient information to make an informed decision.

Background information, including submissions from the parties

4. Mrs N was a member of the LGPS between 1977 and 1990 and re-joined in 1998. She was made redundant in 2014 at age 55.
5. On 28 September 1998, Mrs L was sent a letter (the **Letter**) from BCC which said:

"I have been informed that you rejoined pensionable local government employment on 1 July 1998, having accrued previous pensionable service with Bucks County Council from 25 July 1977 to 31 March 1990.

Normally, your previous service would be automatically added to your current service. In your case, however, it may prove beneficial to retain preserved benefits in respect of the first period and to start a second, separate, record. This is because your current pay is less than the pay used to assess your preserved benefits, when increases in the retail price index are applied ...

“Pay, along with pensionable service, is a vital factor in the assessment of all scheme benefits. Any reduction represents a possible reduction to your pension and lump sum. Of course, your pay could increase at a higher rate than the retail price index, resulting in your pay ultimately becoming of a greater value than your updated previous pay.

...

If you would like to discuss this matter before making a decision, please contact the Pensions Section.”

6. Mrs N says she telephoned the Pensions Section to discuss her options and they suggested she keep her two periods of service separate. There is no evidence of this telephone call.
7. Following proposed changes in her workplace, in November 2013, Mrs N contacted BCC to ask if she could amalgamate her two periods of service. The response, on 21 November 2013, was that the option was given to her in 1998 and they could not re-offer her the option to amalgamate her service.
8. Mrs N complained to BCC via the internal dispute resolution procedure and, remaining dissatisfied with their decision, she made a complaint to my service.

Adjudicator’s Opinion

9. Mrs N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by BCC. The Adjudicator’s findings are summarised briefly below:
 - Mrs N should not have solely relied on the Letter to make a decision and that it was not foreseeable, in 1998 when she made the decision, that she would later find herself being made redundant. There is nothing in the Letter to show that the information she was given, at the time, was incorrect and that it provided an explanation of the consequences of keeping her two periods of service separate.
 - The Letter is worded in such a way that it does not provide advice. The Letter refers her to the Pensions Section to discuss it further before making a decision. As there is no record that a telephone call took place or what was discussed, there is no evidence to support an argument that Mrs N was misled or misadvised. As the alleged call took place in 1998, there was no obligation on BCC to have kept a record for such an extended period.
 - BCC have no record of what members were told in 1998 in relation to transferring in service and there is no evidence of what Mrs N may (or may not) have been told about this in a telephone conversation. BCC were correct in following the LGPS regulations in not allowing her service to be amalgamated following her original decision, even though her personal circumstances have now changed.

- There is no guarantee that, even if Mrs N had joined her service together that she would be entitled to unreduced early retirement under the “85 year rule” as this would still be with employer’s consent.
10. Mrs N did not agree with the decision of the Adjudicator and further submitted:
- That the Letter still did not contain adequate information in which to make an informed decision and that it lacks information about other scenarios, such as redundancy, ill health, leaving service or death in service. Her view is that it should have been clearer and that this would have had a significant influence on her decision. She also claims that the letter should have stated that she had a 12 month time frame in which to change her decision.
 - She says she had a lengthy conversation with the Pensions Section, but is unable to prove this, despite contacting her telephone provider for evidence.
 - She is unsure of who she could have sought advice from, outside of BCC.
 - She says that BCC have no evidence of what was sent to her when she re-joined the LGPS and there should have been a copy on her file. Because of this, she believes that no information was sent to her in 1998.
 - Her understanding is that, from age 55, if a member leaves service due to redundancy then they are eligible for unreduced early retirement benefits.
11. Mrs N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mrs N has provided her further comments which do not change the outcome. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by Mrs N for completeness.

Ombudsman’s decision

12. The Letter was sent to Mrs N to provide her with two options – either to keep her two periods of service separate or to amalgamate them together. Reading through the letter, its purpose does not appear to be to provide details of all of the consequences following whichever decision she made. Which is why there was the option to contact the Pensions Section. I agree that the Letter does not provide advice or any misleading information and, if Mrs N was seeking advice, it was within her power to seek that elsewhere. This could have been via an independent financial advisor or through contact with what was then known as the Occupational Pensions Advisory Service (now The Pensions Advisory Service), who could have provided her with the information that she thinks the Letter is now lacking.
13. It is unfortunate that there is no evidence of the telephone call Mrs N says took place in 1998. I do not believe that having a record of the call from her service provider would make a difference to the complaint, as, while I do not doubt that Mrs N did make a call, there is no evidence of what was said during that call. It is merely

conjecture as to whether or not she was provided with advice, whether the various consequences were explained to her and/or details of the time frames in place in which to make a decision.

14. As previously explained to Mrs N, there was no legal obligation for BCC to keep detailed records of telephone calls for such a lengthy period and this would also extend to what information she may have been sent when she re-joined the LGPS. Merely because there was no obligation to keep this information does not mean that Mrs N can claim that it was not sent to her. The evidence does not point either way.
15. In my view, Mrs N's complaint stems from hindsight. It was not known in 1998 that in 2014 she would be faced with redundancy and, if she had amalgamated her service, her benefits at early retirement could have been higher. I agree with her point that from age 55 she would have been entitled to a larger unreduced benefit following redundancy. But, despite this, it does not change the outcome for Mrs N, that a decision was made, based on correct information in 1998 and, merely because Mrs N's current position was not explained to her does not mean that she can reverse that decision some 16 years later.
16. Therefore, I do not uphold Mrs N's complaint.

Anthony Arter
Pensions Ombudsman
23 November 2016