

## Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme ( <b>LGPS</b> )
Respondents	South Lanarkshire Council ( <b>the Council</b> ) Strathclyde Pension Fund ( <b>the Fund</b> )

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Council and/or the Fund.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N believes his mother (as a member of the LGPS) was not made fully aware of the implications of selecting a retirement date of 31 March 2009, a day before changes were made to the amount of death benefits payable to beneficiaries took effect. He believes that if she was made aware she would have waited an extra day and he would now be receiving a death benefit from the LGPS.

## Background information, including submissions from the parties

4. The Fund had sent information to members in 2006, 2007 and 2008 about proposed changes to the LGPS effective from April 2009. In December 2008, Mrs N was sent a document "Changing for you, changing for the better", which the Fund says was sent with her annual benefit statement. Page 10 gives information about death grants payable, in particular:

"If a pensioner who takes retirement benefits after 1 April 2009 dies prior to age 75, a lump sum death grant based on 10 x pension less pension already paid is payable. This is double what the old LGPS provides."

5. For those who retired before 1 April 2009, the relevant LGPS regulations<sup>1</sup> state that the death grant is payable within the first five years following the death of the member, minus any pension already paid.
6. On 22 January 2009, Mrs N wrote to the Fund, "I am writing to ask if you could give me a rough estimate of my pension if I decided to retire in a couple of months."
7. On 10 February 2009, the Fund provided Mrs N with an estimate giving a retirement date of 31 March 2009. The estimate makes mention of a widower's pension, but not of any death benefits payable. The Fund have submitted that death grants are not included on benefit estimates – "When estimates are provided they are intended to provide information on retirement benefits, with the aim being to allow individuals to plan for their retirement, rather than amounts payable following death."
8. Mrs N accepted the retirement estimate on 25 February 2009 and retired on 31 March 2009. The Fund have also submitted that pre-retirement interviews are available, but Mrs N did not request one.
9. Mrs N died on 1 December 2014, more than five years after she retired. As a result, Mr N (on behalf of the Estate) was informed that no death benefit lump sum was payable.
10. Mr N was unhappy with this and therefore complained through the LGPS' internal dispute resolution procedure (**IDRP**). The complaint was not upheld on the basis that:
  - the Fund were satisfied that relevant information regarding the changes were provided to Mrs N before she requested a retirement estimate;
  - it would have made no difference if Mrs N had been provided with an estimate showing a retirement date after 1 April 2009, as death benefit lump sums are not included on retirement estimates;
  - neither the Fund nor the Council could have provided Mrs N with advice about the best date in which to retire;
  - it was confirmed that Mrs N did not request a pre-retirement interview; and
  - as Mrs N had retired before 1 April 2009 the relevant regulations meant that a death benefit lump sum was not payable and that the Fund had correctly applied the regulations.
11. Mr N remained unhappy with the outcome of his IDRP decision and so made an application to this service. As part of this, his complaint was expanded to include the Council, Mrs N's former employer, who submitted:

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<sup>1</sup> Regulation 37(8) of The LGPS (Scotland) Regulations 1998

“I can confirm that from the Council’s perspective, employees are entirely free to choose a retirement date based on their own personal preferences and circumstances, and as an employer, we have no requirement or desire to influence these dates. The only exception to this may be in situations where an employee has not provided the minimum period of notice, in which case they would be asked to choose another retirement date which met the requirements.

The council is unable to comment on the reason why Mr N’s mother chose 31 March 2009 as her retirement date. However I can confirm that the last working day of the month is commonly chosen by employees retiring or resigning from the Council.

In his complaint Mr N states that, in his opinion, the Council should have advised his mother that by delaying her retirement by 2 days, until the new regulations came into effect, the death-in-pension benefits would have been more beneficial to her family members in the event of her passing away.

The Council says that providing advice on this matter would be akin to providing financial advice and this is not something that council employees are qualified to do. For this reason the standard retirement letter, sent to employees to acknowledge their retirement, stresses the importance of seeking independent financial advice prior to their retirement.

In the run up to the new pension regulations coming into effect, the council actively communicated the key changes to the workforce through a series of briefings, circulars and articles in the works magazine. The communication centred on encouraging pension scheme membership, and highlighting the key differences between the current and new scheme regulations. The aim of this communication was to provide pension scheme members with information on which to base any future decisions about their pension and retirement.”

## **Adjudicator’s opinion**

12. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council and/or the Fund. The Adjudicator’s findings are summarised briefly below.
  - The Adjudicator agreed with TPAS and the Council that the responsibility for choosing a retirement date lies with the scheme member and that it is not unusual for people to decide to retire at the end of the month, rather than a few days into a new month.
  - It is not possible to question Mrs N as to why she chose 31 March 2009 as her retirement date and any questioning of this is merely supposition. However, there was nothing within the facts presented that showed Mrs N had not made the decision to retire on 31 March 2009 of her own accord, or that she took the

opportunity to ask for a different retirement date, or that she took the opportunity to have a pre-retirement discussion.

- There was nothing to suggest that information was not provided to members about the changes, prior to Mrs N's decision to retire.
- The Adjudicator also agreed that any information the Council or the Fund would have given in relation to delaying retirement to receive a potentially higher benefit would constitute financial advice.

13. Mr N disagreed with the Adjudicator's views and submitted:

"... I have read your letter closely however I do not agree with your conclusions. Anyone paying for a service deserves and expects to receive a level of service in return. You have mentioned that informing my mother of access to the new scheme would be construed as financial advice but this is very far from the level of advice you would receive from a financial advisor and a quick 2 minute phone call or letter to say hold off your retirement for 1 more day because "-----" cannot be described as financial advice. Indeed in one of your letters in response to my complaint from the pension scheme the adjudicator mentions (as do you) that my mother could have asked for advice prior to retiring. So is this classed as financial advice which they are not supposed to give?"

14. As Mr N did not accept the Adjudicator's opinion, the complaint was passed to me to consider. Mr N's further comments do not change the outcome. I agree with the Adjudicator's views, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

### **Ombudsman's decision**

15. Mr N's main argument is that, in his view, either the Council or the Fund should have told Mrs N to delay her retirement.
16. I agree that the Council could not have directly advised Mrs N to change her retirement date, as this would constitute financial advice, which they are not regulated to give. But, they are able to give factual information, including the difference between what benefits are available under the old and new scheme. They are not under a general duty to advise members about which date it is best for them to retire on. There was no option of which Mrs N would have been unaware unless the Council specifically brought it to her attention. The Fund had made information available to members in a variety of ways and it was up to Mrs N to have decided, prior to retirement, what was best for her.

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17. Therefore, I do not uphold Mr N's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman

28 February 2017