

Ombudsman's Determination

Applicant	Ms S
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	The London Borough of Waltham Forest (LBWF) and Capita, the former administrators of the Scheme

Outcome

1. Ms S' complaint is upheld and to put matters right LBWF should ask Capita, or the new administrators of the Scheme, to recalculate, and then backdate Ms S' pension, taking into account her higher salary from 2008 before she was redeployed into a lower grade.
2. In addition, LBWF should provide Ms S with an explanation as to why the original quotation for her original lump sum was much higher than the actual amount.
3. LBWF should also pay Ms S £1,000 in recognition of the confusion, distress and inconvenience caused by its lack of response to the complaint, which has significantly increased the time taken to reach a conclusion.
4. My reasons for reaching this decision are explained in more detail below.

Complaint summary

5. Ms S is complaining that LBWF has incorrectly calculated her retirement benefits under the Scheme, and failed to provide her with an explanation as to why the original quotation for her lump sum was much higher than the actual amount.

Background information, including submissions from the parties

6. Ms S joined LBWF in August 1986 and also became a member of the Scheme.
7. In January 2009 Ms S was redeployed by LBWF into new post with a lower grade and salary.
8. She was officially notified of this in a letter of 5 January 2009. This letter also explained that because of her redeployment into a lower grade she would, when she reached retirement, be able to choose to have pension scheme benefits based on an average of any 3 consecutive years in the last 10 years.

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9. The exact wording of the letter was as follows:

“Normally Local Government Pension Scheme benefits are calculated on the better of an employee’s 2 final years’ pay, plus the average of any fees received in the final 3 years. Members of the Local Government Pension Scheme who downgrade, or whose pay is restricted in the final 10 years (other than as a result of flexible retirement), may, if they wish, choose to have pension scheme benefits based on an average of any 3 consecutive years in the last 10 years (ending on a 31st March).”

10. LBWF also said that this election has to be made within 30 days of an employee resigning.
11. However, Ms S says she never received this letter and was instead informed of this provision by a previous manager.
12. Ms S says she discussed her pension figures periodically with various members of LBWF and Capita.
13. In Jan 2015 she was told by Capita in a telephone call that her lump sum would be £81,000, and that her pension would be £10,000 per year. However, her actual lump sum was £51,000 and she has never received an explanation, despite requesting one, as to why she was quoted a significantly higher amount.
14. She also says that Capita calculated her pension based on employment of 27 years 171 days. However, she disputed this and it was eventually amended to 27 years 241 days, and her pension calculation was also corrected accordingly.
15. In May 2015 Ms S decided to resign and apply to take her retirement benefits.
16. At this point she specifically asked LBWF to confirm that her higher salary of £38,887.60 from 2008, not the figure of £37,201.15 used by Capita, would be taken into account for her pension.
17. However, when she contacted Capita she was told that until it had been officially advised that she had left employment with LBWF, it would not discuss her figures with her, in case she changed her mind about leaving.
18. LBWF initially queried the higher salary of 2008, and said all LBWF could identify were some non-contractual shift allowances, which could not have equated to higher salary claimed by her.
19. However, in May 2015 Capita confirmed the higher salary rule, and that it would seek permission from LBWF when the pension was due to go into payment.
20. LBWF subsequently refused permission, stating only that Ms S did not make an election to use her higher salary within the required 30 day period prior to her retirement date.

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21. LBWF also said that notice of this requirement was given to her in a letter dated 5 January 2009, which referred her to the protection arrangements set out in the HR process for managing change.
22. Ms S says that she never received this letter and only found out about the protection arrangements from a previous manager that had a similar issue.
23. She further says that it is clear that LBWF had produced and relied on a false document despite her pointing out the inaccuracies within it.
24. Irrespective of this she says that she contacted LBWF within the required 30 day period from the point at which she resigned in early May 2015.
25. Ms S left LBWF in June 2015, but did not receive her pension until December 2015, as she was pursuing a complaint with regard to the correct final salary to be used.
26. She attempted to raise the matter under the Internal Dispute Resolution Procedure at LBWF. However, it failed to respond to this request and the complaint was brought to this office.
27. The matter was accepted on 4 October 2017, and a request for a formal response was sent to LBWF on 13 October 2016.
28. However, LBWF has also failed to respond to this request, despite repeated assurances that a response was forthcoming, and that an independent investigation into the complaint was being undertaken.

Adjudicator's Opinion

29. Ms S' complaint was considered by one of my Adjudicators who concluded that further action was required by LBWF. The Adjudicator's findings are summarised briefly below:-
 - LBWF and Capita have not provided this office with a formal response to the complaint, but have previously disputed that Ms S' request for her 2008 salary to be used as part of her retirement benefit calculation was made within the 30 day period.
 - Based on the limited information available to the Adjudicator, he found that because of Ms S' redeployment into a lower grade role in 2009, she was eligible to choose to have pension scheme benefits based on an average of any 3 consecutive years in the last 10 years, and her request to do so was made within the 30 days from the date of her resignation as required by LBWF. She is therefore entitled to the higher salary of £38,887.60 from 2008 to be used in the calculation of her pension.
 - It is therefore the opinion of the Adjudicator that this complaint should be upheld against LBWF as it have failed to provide evidence that the request was not made

within the required period, or satisfactorily explained why LBWF decided it had not been made in time.

- In addition to this, Ms S has still not been given an explanation by Capita on why her original lump sum was quoted at £81,000, instead of the actual figure of £51,000.

Ombudsman's decision

30. Ms S accepts the Opinion of the Adjudicator but is concerned that LBWF will not respond to the question regarding her misinformed lump sum.
31. LBWF has now accepted that Ms S' election should have been allowed at the time of her retirement and has agreed to recalculate and backdate the adjusted pension.
32. However, LBWF has failed to provide an explanation on why the quotation for Ms S' lump sum was higher than the actual amount, and has also not addressed the award of £1,000 in respect of the confusion, distress and inconvenience caused.
33. Therefore the complaint was passed to me to consider and to determine.
34. I agree with the Adjudicator's Opinion, and therefore uphold Ms S' complaint.

Directions

35. Within 21 days LBWF will:

(i) ask Capita, or the new administrators of the Scheme, to recalculate Ms S' pension taking into account her higher salary from 2008 and backdate payment to the point at which it should have originally been paid;

(ii) provide Ms S with an explanation as to why the original quotation for her lump sum was higher than the actual amount; and

(iii) pay Ms S £1,000, in recognition of the significant confusion, distress and inconvenience caused by LBWF's lack of response to the complaint, which has appreciably increased the time taken to reach a conclusion.

Anthony Arter

Pensions Ombudsman
8 August 2017