

## Ombudsman's Determination

Applicant	Mr E
Scheme	Local Government Pension Scheme ( <b>LGPS</b> )
Respondent	Lancashire County Council ( <b>LCC</b> )

## Outcome

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

## Complaint summary

3. Mr E disagrees with the late retirement factors that will be applied by LCC when he retires, as these will be applied to the full period between his 65<sup>th</sup> birthday and his eventual retirement date. He argues that the factors should, at the very least, only apply from the date they came into effect (i.e. 15 March 2017) until his eventual retirement date.

## Background information, including submissions from the parties

4. Mr E reached the LGPS' normal retirement age of 65 in December 2015, but made the decision to continue his employment after this date. At the time, the late retirement factors applied between age 65 and retirement were 0.014% in relation to annual pensions and 0.007% in regards to lump sum payments.
5. On 4 October 2016, the Government Actuary's Department (**GAD**) issued guidance in relation to late retirement factors which changed the rates to 0.01% for annual pensions and 0.001% for lump sum payments. A copy of the relevant section of the guide is in Appendix I. The guidance was effective from 4 January 2017, but LCC have submitted that, due to late notice, it will apply the new factors to retirements from 15 March 2017.
6. Regulation 30(4) of The Local Government Pension Scheme Regulations 2013 (**the Regulations**) state:

"A member who starts to receive payment of a retirement pension from a date after that member's normal pension age is entitled to enhancement of the pension by the

amount shown as appropriate in actuarial guidance issued by the Secretary of State.”

7. On hearing of the changes to the late retirement factors, Mr E complained to LCC under the LGPS’ internal dispute resolution procedure (**IDRP**). His complaint was not upheld under either stage on the basis that the Regulations state that his late retirement benefits will be paid in accordance with the guidance issued by GAD and that the guidance does not allow for different retirement factors to be used for service accrued before 15 March 2017.
8. As part of his argument, Mr E has said that he relied on the higher factors contained in the member booklet and on LCC’s website. The member booklet states, “This booklet is for general use and cannot cover every personal circumstance nor does it cover specific protected rights that apply to a very limited number of employees. In the event of any dispute over your pension benefits, the appropriate legislation will prevail as this booklet does not confer any contractual or statutory rights and is provided for information purposes only.” The leaflet on the website also has a similar disclaimer. Mr E has also provided a copy of an online retirement quotation dated 30 August 2016 which also has a disclaimer that the above figures are for illustration purposes only and should not be relied on to make financial decisions.

### **Adjudicator’s opinion**

9. Mr E’s complaint was considered by one of our Adjudicators who concluded that no further action was required by LCC. The Adjudicator’s findings are summarised briefly below:-
  - LCC are correctly applying the Regulations and were acting on the guidance issued by GAD and therefore there was no maladministration in the way in which this was being applied to Mr E. If Mr E remained unhappy with the GAD calculations, this was a matter he could raise directly with GAD, but was unlikely to be one that would fall within the Ombudsman’s remit to investigate.
  - The Adjudicator felt that it was difficult for Mr E to argue that he relied on the higher late retirement factors to continue working. It was her view that this is a hypothetical loss, as Mr E had not yet retired, and there was always the possibility that the factors could change again. It was also her opinion that Mr E had not provided evidence that met the test for detrimental reliance.
10. Mr E did not accept the Adjudicator’s opinion and submitted the following:

“Firstly, I don’t agree with your conclusion that I had continued to work solely to secure the higher pension value, but I am arguing that I had a reasonable right to expect that the value contained original [sic] forecast be paid, after all the information on the LGPS website also confirmed the enhancement rates for the late access of the pension payable.

I believe this constitutes a “change of position” in legal parlance and that I have a right to expect that the value of pension payable for the period immediately following my 65<sup>th</sup> birthday, should not be reduced, but I would accept a reduction in the rate of enhancement from January 2017 onwards, as that rate reduction was announced in advance.

I also disagree with your conclusion that I have suffered a hypothetical loss. It is absolutely clear from the forecasts that I have provided that the value payable in my latest forecast falls £745 per annum lower than the value provided twelve months earlier, despite contributing towards my fund in the meantime.

I am continuing to work partially to attempt to restore the value of my pension to the value it was reasonable to expect.

Finally, I don’t agree with the assumption that I was wrong to believe that the values in the earlier forecast would not be correct. The method of calculation is available in the Member’s Guide, and also on the LGPS website so that I understood that it was correct.”

11. As Mr E did not accept the Adjudicator’s Opinion, the complaint was passed to me to consider. Mr E’s further comments do not change the outcome. I agree with the Adjudicator and I will therefore only respond to the key points made by Mr E for completeness.

### **Ombudsman’s decision**

12. I empathise with Mr E’s disappointment that, while he was aware of the rate of late retirement factors when he made the decision to continue working past age 65, he was not aware that these factors might change. What I must look at is whether or not LCC are correctly applying the relevant Regulations and that Mr E’s benefits are therefore calculated accordingly.
13. The Regulations are clear that late retirement factors are calculated in accordance with guidance issued by the Secretary of State. In this case, the Department for Communities and Local Government issued guidance from GAD for administering authorities to apply late retirement factors. Section 2.5 and 2.6 of this guidance also clearly states the factors that must apply and that this must apply to all benefits accrued after age 65 to the member’s selected retirement date (but not later than age 75). LCC have interpreted and acted in accordance with the relevant Regulations and therefore the factors that will be applied to Mr E’s benefits, for the whole of his service after age 65, are correct and I cannot fault them for this.

14. Mr E is arguing that he had a reasonable expectation that the higher factors would apply. This is because the factors are clearly listed in the member's guide and in guidance issued on LCC's website. However, both documents have clear warnings that they are for information purposes only and that relevant legislation overrides the information contained in these sources. While I understand Mr E's frustration, LCC must provide benefits in line with all relevant legislation and regulations and therefore cannot use the rates which were previously published.
15. His second argument is that this constitutes a "change of position". I disagree. To succeed in such an argument an individual has to be able to prove that they acted in a way that they would not otherwise have done because of wrong information provided to them, that this has caused some financial loss and it would be inequitable to allow the person who provided the statement now to go behind it.
16. In this case, I am satisfied that Mr E was provided with information that was correct at the time it was published. Mr E has admitted that he did not make the decision to continue working based on the higher factors only and therefore, it is more likely than not that if he had known that the late retirement factors could change before he retired he would still have made the same decision to continue working. Given the other benefits of continuing to work (not exclusively, continuing scheme membership and salary) it is difficult to argue that the possibility of factors changing before he retired would have been a significant factor in his decision to continue in employment. If Mr E would have acted in the same anyway, then he cannot prove detrimental reliance on the information provided.
17. Mr E has also commented on the Adjudicator's statement that his loss is hypothetical. While Mr E can see a forecast of his benefits and the difference between what he might have got before and after the change, to date he has not retired and is not receiving any benefits. Therefore, the loss he is claiming is in the future and, as no one knew in December 2015 that the late retirement factors would change, no one also knows that this will not change again before Mr E decides to retire.
18. Lastly, I do not consider that there was any maladministration in the way that the actuarial factors were explained because they were correct at the time that the information was provided.
19. Therefore, I do not uphold Mr E's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
27 November 2017

**Appendix I**

**The Government Actuary's Department: The Local Government Pension Scheme  
(England and Wales) Late Retirement**

**2 The increase in benefits**

2.1 Pensions are increased if they are taken after the following ages:

- For service before 1 April 2014: age 65
- For service on or after 1 April 2014: State Pension Age, or if higher, age 65 (except in the case of councillor members, where the age will be age 65).

2.2 For members retiring after age 65 with a State Pension Age greater than 65, retirement might occur between age 65 and State Pension Age, or after State Pension Age. Where retirement takes place after age 65 but before State Pension Age, the pre-2014 benefits will be adjusted upwards in accordance with this guidance document and the post-2014 benefits will be adjusted downwards in accordance with the guidance document "Early Retirement". Where retirement takes place at State Pension Age, benefits from pre-2014 service will be adjusted upwards in accordance with this guidance document. Where retirement takes place after State Pension Age, benefits from both periods will be adjusted upwards in accordance with this guidance document but different increases will apply to service before 1 April 2014 and on or after 1 April 2014.

2.3 DCLG has confirmed that, where an addition to a member's benefits applies as a result of the statutory underpin (Regulation 4(4) of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 ("the 2014 Scheme Transitional Regulations") (SI 2014/525)), and the member's benefits are taken after age 65, all of the member's benefits accrued up to normal retirement age in the 2008 scheme, (whether accrued before or after 1 April 2014) and the benefits corresponding to the "underpin amount" described in regulation 4(6), are subject to adjustment for late payment by reference to age 65. Any benefits in excess of this would be subject to adjustment (whether upwards for late payment or downwards for early payment) by reference to the member's normal pension age in the 2014 Scheme.

2.4 DCLG has also confirmed that State Pension Age for the purpose of calculating late retirement factors should be based on legislation in force at the point benefits are paid.

2.5 Both the pre-1 April 2014 and the post-31 March 2014 elements of the pension benefits should be uplifted by 0.010% simple – and the automatic 3/80ths retirement grant (if any) deriving from pre-1 April 2008 service should be uplifted by 0.001% simple – for each day on or after the member reached the ages specified in paragraph 2.1 above, and before the member's actual retirement date.

- 2.6 Subject to paragraph 2.9 below, the increase under this guidance should be applied to the total pension, including the Guaranteed Minimum Pension ("GMP") element of the pension. The increase should be applied to the benefits after Pension Increases have been added in relation to any period of deferment.
- 2.7 Under regulations 25(7), 26(6) and 29(3) of the 2013 Regulations, once in payment, retirement pensions should be increased in accordance with the 'index rate adjustment' (ie under the Pensions Increases Acts). Any pension accrued under the 2008 Regulations should be increased under the Pensions Increases Acts.
- 2.8 Regulation 30(3) and 30(11) of the 2013 Regulations requires that the pension must come into payment no later than the day before the member's 75<sup>th</sup> birthday.
- 2.9 Section 13 of the Pension Schemes Act 1993 requires member consent if GMPs are deferred by more than 5 years after GMP age (which is age 60 for females and 65 for males). Where a member elects to draw the GMP element of their total benefits, only the excess pension (over the GMP) should be increased at retirement in accordance with paragraph 2.3. This also applies where a deferred pension has been postponed until after age 65 but whether the GMPs have been brought into payment earlier (at or after GMP pension age).
- 2.10 The regulations do not stipulate the method to be used in calculating the late retirement increases. The factors in this guidance have been provided in a simple format to ease administration. They provide outcomes of broadly actuarial neutrality within the constraints of the simple format adopted.