

Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme (LGPS)
Respondent	North Yorkshire Pension Fund (NYPF)

Outcome

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

Complaint summary

3. Mr N is complaining that NYPF provided an incorrect early retirement estimate on the online pension calculator in December 2015. He is asking NYPF to pay him an amount to recognise the distress its error caused him.

Background information, including submissions from the parties

4. NYPF have submitted that between 7 and 14 December 2015, the online calculator was failing to make reductions to early retirement pension forecasts. In other words, no early retirement factors were applied to pension estimates made using the online calculator at this time. Mr N ran a benefit calculation on 7 December 2015.
5. Mr N does not have a record of what was quoted on the online calculator in December 2015, but says this was for an annual pension of approximately £14,000 with a tax free cash lump sum of approximately £28,000.
6. Mr N says that he used this figure to plan for his early retirement at either his 55th (in June 2016) or 56th birthday (in June 2017). He logged on to the online calculator on 16 May 2016 and found that a reduction had been applied to the benefits he had previously been quoted. As a result, Mr N complained to NYPF.
7. NYPF did not uphold Mr N's complaint under the internal dispute resolution procedure (**IDRP**). NYPF did agree that there had been an error with the online calculator and apologised for this. But, it ultimately concluded that Mr N had not suffered a loss as he had not made a formal decision to retire or been provided with a formal notification of his retirement benefits by NYPF. It also provided details of the relevant regulations

and that the LGPS Regulations 2013 “now allows a member who is aged 55 or over the chance to elect to receive his monthly pension immediately.” Prior to the introduction of these regulations, members were not permitted to retire before age 60, unless with the consent of their employer. NYPF have also said the online calculator includes a disclaimer warning members not to rely on the calculations given when making retirement decisions.

8. Mr N remained unhappy with the response from NYPF and made a complaint to this service.
9. As part of the investigation of his complaint, Mr N (via his representative, Mrs N) said:
 - He had been provided with higher earlier retirement figures in previous years, before he logged on to the online calculator in December 2015. Mrs N says that they had been provided with incorrect information more than once and they had used this information to plan for their retirement;
 - Mr N had been in poor health over the past few years and as a result of this he was considering retiring early;
 - Mrs N provided details of her own anxiety and ill health as a result of the misleading information provided by NYPF;
 - Mrs N said that if they had known the correct figures when Mr N was aged 52 (in June 2012), they would have put money aside and taken out Additional Voluntary Contributions (**AVCs**). She says that Mr N telephoned NYPF in June 2016 and was told that he could only invest in AVCs if he did not retire in the next two years. They have looked into other savings and investments to maximise their retirement income; and
 - Mrs N agreed that Mr N is not entitled to the higher retirement amount given on the online calculator in December 2015. The complaint therefore focuses on the distress and inconvenience caused to Mr N for being provided with incorrect information.
10. NYPF responded to this as follows:
 - Mr N did not access the online calculator before 18 February 2015 (this being his first log-in date) and the first time he calculated benefits was on 7 December 2015;
 - It confirmed that estimates have not been issued to Mr N (and none from 2013) and therefore the only information he has received is via the online calculator and annual benefit statements;
 - If Mr N had requested an early retirement quotation in 2013, it would have informed him that the earliest he could retire would be from age 60, as the LGPS regulations did not change to age 55 until April 2014; and

- It apologised again for the error but does not agree that Mr N is entitled to a distress and inconvenience payment.

Adjudicator's Opinion

11. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NYPF. The Adjudicator's findings are summarised briefly below:-

- There was no dispute between the parties that an error had occurred and the only issue to be considered was whether Mr N should receive a payment to recognise the distress and inconvenience he is claiming;
- There was no evidence submitted to support Mrs N's claims that Mr N had been provided with misleading information on more than one occasion;
- Mr N could not claim that he wanted to take early retirement from age 52 (in 2013), as the regulations of the LGPS did not allow this at the time;
- It was agreed that there was no evidence submitted to support Mr N's claims that he raised questions about AVCs before 2016 and that it would have been reasonable that, if he was considering early retirement from age 52 that he should, at the very least, have raised queries about this before his 55th birthday. It would have also been reasonable to have made an early retirement estimate request, in writing, or to have kept print outs of the estimates he says he received from the online calculator; and
- The Adjudicator recognised that Mr N had suffered some distress and anxiety (but could not take into consideration Mrs N's claims, as she is not the applicant or the member of the LGPS), but did not feel that a one-off error was enough to warrant an award of £500 or more and therefore the apology offered by NYPF was sufficient.

12. In response to the Opinion, Mr and Mrs N submitted, in summary:

- They disagree with the log-in details provided by NYPF and believe Mr N logged in before February 2015, but had to reset his password. They did not write down any of the figures at this time, but say that these were the same as provided in December 2015;
- Mr N was in contact with NYPF at the same time as he received the December 2015 figures and therefore NYPF were aware that he was considering early retirement;
- They believe that, as NYPF were aware of the error, it ought to have been proactive in telling members that an error had occurred;

- They used the estimates provided to budget and plan for their retirement and the projections provided by NYPF should be fit for purpose;
- They were given incorrect figures on more than one occasion, but cannot say when this was;
- “An apology for something as much as this is not enough, we have been substantially distressed by the mistakes and maladministration and it has affected our ability to make finical [sic] plans for the future and the information given means we have to wait an extra 5 years more than we anticipated which is a significant amount of time.” Mr and Mrs N go on to say that they do not feel that the apology was sufficient and that this does not give the right message to other “companies”;
- Mrs N says that she spent hours working out their finances so that Mr N could retire at 55/56. She provided further details of Mr N’s ill health and other reasons for wanting to retire early;
- Mr N attended a seminar in December 2014 and was told to use the online calculator. AVCs formed part of this presentation. Based on the projection, they decided that they could afford to retire at 55/56 without AVCs; and
- Mrs N disagrees that she told the Adjudicator that Mr N had thought about retiring at age 52 – Mr N must have been 53 as they were aware of the changes to the LGPS regulations that would allow him to retire from age 55 without the need for employer consent.

13. NYPF also provided additional information:

- It did not provide any projections for Mr N in December 2014. Any figures would have been provided online;
- Besides the log-in details previously provided, there are no other log-in details for Mr N recorded on its system;
- It has no details of the seminar Mr N says that he attended in 2014, but this may have been a generic “preparing for retirement” seminar “giving people general information about what they should think about when planning for retirement.”
- A copy of the emails exchanged with Mr N in December 2015 to June 2016. The emails show that Mr N first contacted NYPF in order to up-date his relationship status and to nominate a death benefit nominee. In January 2016, Mr N asked NYPF a couple of questions relating to retirement while still working and any tax implications. NYPF replied that he must first retire or take flexible retirement. Mr N then emailed NYPF again on 16 May 2016 to question the difference between the December 2015 online projection and the current projection being less. NYPF replied on 24 May 2016 to confirm that the previous figures provided did not include a reduction for service up to 31 March

2008. It also said “The reason the annual benefit statement figures are higher is these include no reductions at all and show the pension you have accrued up to the relevant date of the annual benefits statement.”

- Copies of annual benefits statements for 2014 and 2015. The 2014 statement showed a benefit of £12,165.21 per annum and a lump sum of £28,533.97 as at 31 March 2014. The 2015 statement showed a benefit of £14,088.51 and a lump sum of £30,296.95 as at 31 March 2015.

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

Ombudsman’s decision

15. There is no doubt that an error occurred in December 2015 and all parties agree this. What I am being asked to consider is whether NYPF should pay Mr N an amount to recognise the distress and inconvenience caused as a result of that error. Even where it is recognised that maladministration did occur, this does not always result in a payment for non-financial injustice.
16. Despite Mr and Mrs N’s assertions, there is no evidence submitted by either parties to show that an incorrect estimate was given at any time other than 7 December 2015. I am therefore considering one incorrect statement provided by the online estimator.
17. As for Mr and Mrs N’s claim that NYPF ought to have made them aware in January 2016 of the error, or to have taken a proactive approach to inform other members, I disagree. The emails are not clear that Mr N is actually intending to make a retirement decision – he was merely asking for general information. It is not up to NYPF to guess Mr N’s possible intentions unless he made it clear that he wanted to retire from age 55 and what his options were. As the period of the error was over a short period (one week), on an online projector with a disclaimer, it is reasonable for NYPF to conclude that members would seek a written estimate before making financial plans and that it would not be a prudent use of the scheme’s funds to contact members to alert them of the error.
18. I have to consider what level of distress and inconvenience flowed from the single error above and whether it was so significant that I ought to make an award to remedy the injustice which has occurred.
19. I do not consider that the error can have deterred Mr N from taking out an AVC when he was 52 (in June 2012), or at any date prior to 2015, because he did not run the calculation until 2015. I note that Mrs N made calculations based upon the on-line figure provided, but I conclude that the majority of the distress and inconvenience to Mr N is likely to flow from the fact that he is unable to afford to retire at 55. It was not the error itself which has caused him to have to work on for longer than he hoped. In

PO-15392

the circumstances I consider the apology made prior to the complaint being brought to this office is sufficient remedy for the injustice caused and therefore do not uphold the complaint.

Karen Johnston

Deputy Pensions Ombudsman
31 October 2017