

## Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	London Community Rehabilitation Company ( <b>LCRC</b> ), Greater Manchester Pension Fund ( <b>GMPF</b> )

### Outcome

1. I do not uphold Mr N's complaint and no further action is required by LCRC or GMPF.

### Complaint summary

2. Mr N's complaint is that his former employer, LCRC, and GMPF will not now allow him to present a claim for back-dated Scheme membership.

### Background information, including submissions from the parties

3. On 1 November 1994, Mr N joined the Scheme. Mr N worked part-time for several Probation service employers between 15 December 1980 and 15 December 2015 and his employment was transferred several times under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) until June 2014 when he moved to LCRC.
4. On 15 December 2015, Mr N was granted ill health retirement (**IHR**) from the Scheme by LCRC.
5. On 7 June 2016, after protracted exchanges of correspondence with LCRC, GMPF wrote to Mr N stating the value of his pension entitlement. GMPF also referenced the Preston Judgement<sup>1</sup> (**Preston**) and said that any claims for back-dated Scheme membership should be lodged with an employment tribunal within six months of Mr N leaving employment.
6. On 2 September 2016, Mr N wrote to LCRC requesting that it consider his request to backdate his Scheme membership for the period that he worked part-time.

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<sup>1</sup> Preston and others v Wolverhampton Healthcare NHS Trust and others (No.2) [2001] HL (**Preston**)

7. On 23 September 2016, Mr N's employment union provided him with advice on his complaint. Mr N says that this advice was the first time he became aware that his claim for backdated Scheme membership was out of time; the advice is summarised below:-
- Mr N should have brought a claim for backdated Scheme membership within six months of the end of the employment to which his claim related, which was not LCRC.
  - Employment Tribunals (**ET**) had no jurisdiction to extend the six-month time limit for such claims.
  - Mr N could only pursue a breach of contract claim in a civil court within six years of the date on which the cause of action begins<sup>2</sup>. The deadline to do so was in 2000.
  - Mr N could still ask LCRC to consider his application for back-dated Scheme membership by considering and settling his complaint informally.
8. On 16 January 2017, LCRC wrote to Mr N saying that it refused his request to backdate his Scheme membership and that his claim for conciliation using the Advisory, Conciliation and Arbitration Service (**ACAS**) was out of time.
9. On 10 February 2017, Mr N wrote to GMPF requesting it to ask LCRC to reconsider his request for backdated membership. Mr N said that he considered the claim deadline imposed to be "grossly unfair" as he had only become aware of the Preston Judgement in June 2016.
10. In May 2017, Mr N raised a complaint under the Scheme's internal dispute resolution procedure (**IDRP**) about LCRC's decision not to allow him to pursue a complaint for backdated Scheme membership.
11. On 26 May 2017, GMPF responded to Mr N's complaint. GMPF said that it was outside its remit to ask LCRC to reconsider Mr N's request. However, Mr N could ask LCRC to extend the time limit given that his awareness of Preston was delayed due to information supplied by LCRC to GMPF.
12. On 6 November 2017, LCRC wrote to Mr N saying that it had considered his request and would not extend the time limit to consider his claim. LCRC maintained its view that Mr N's claim was out of time.

### **Adjudicator's Opinion**

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

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<sup>2</sup> Abdulla and others v Birmingham City Council [2012]

- In the Adjudicator's view, GMPF should take no further action because the responsibility for considering Mr N's request lies solely with LCRC and is outside the Scheme Regulations.
  - Mr N could not bring his claim to an ET because he was outside the six-month deadline to do so in accordance with the time limits set down in Preston. The Ombudsman does not have the power to extend this deadline in order for Mr N to bring a claim to an ET now. Consequently, Mr N's complaint could only be accepted by LCRC informally.
  - Mr N says that he only learnt of Preston in June 2016 and he was consequently denied the opportunity to bring a claim. Mr N had one week in which to act after receiving GMPF's letter in June 2016. Mr N received the June 2016 letter before the deadline elapsed and could have raised an ET claim. However, the Adjudicator had seen no evidence that Mr N acted before September 2016, over two months after the deadline elapsed.
  - Mr N disagreed with LCRC's decision not to subsequently accept his claim for back-dated Scheme membership. However, Mr N's disagreement is insufficient reason for his complaint to be upheld. The Adjudicator considered that there was no evidence to suggest that LCRC had a discretion to accept Mr N's claim out of time or was under any obligation to consider it.
  - LCRC was entitled to strictly apply the deadline set out in Preston as part of deciding whether it should consider Mr N's claim. Consequently, in the circumstances, the Adjudicator considered that the Ombudsman was not likely to remit LCRC's decision back to it to consider afresh.
14. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will only respond to the points made by Mr N for completeness.

### **Ombudsman's decision**

15. Mr N argues that GMPF were responsible for informing him of Preston earlier than June 2016 by which time it was too late for him to make a claim to an ET. Mr N says that it was impossible for him to have done so in the week remaining before the deadline. I agree that the remaining time for Mr N to act before the deadline was extremely limited and I have considerable sympathy with the position in which Mr N finds himself. However, I do not agree that GMPF should take further action because it notified Mr N of Preston within the deadline for him to make a claim. For the reasons identified by the Adjudicator, I cannot extend this deadline in order for Mr N to now make a claim to an ET (or the Courts).
16. I appreciate that Mr N was suffering from ill health during this period and it might not have been possible for him to complete the necessary steps to raise a claim before

the deadline. However, I have seen no evidence that Mr N attempted to claim back-dated Scheme membership with LCRC before September 2016. I also appreciate that Mr N considers it insensitive for LCRC to dismiss his claim for back-dated Scheme membership. As the Adjudicator noted, Mr N's disagreement with the outcome is insufficient reason on its own for his complaint to be upheld.

17. Mr N says that LCRC chose to use the ET deadline as a means of refusing to grant him back-dated Scheme membership. However, I have seen no evidence that LCRC had a discretion to accept the claim out of time. There is every possibility that one of the factors that LCRC considered in deciding whether Mr N's claim was reasonable was whether it was made in time. I agree with the Adjudicator's view that LCRC was entitled to strictly apply the deadline set out in Preston. Consequently, there are no justifiable grounds for me to find that LCRC's decision was unreasonable or that the process undertaken to reach it was flawed.
18. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
4 December 2019