

Ombudsman's Determination

Applicant	Mrs P
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Haringey Council (the Council)

Outcome

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

Complaint summary

3. Mrs P complains that the Council provided her with incorrect information about her pension, over a four-year period. Mrs P says that she relied on this incorrect information when deciding to take voluntary redundancy.

Background information, including submissions from the parties

Background

4. In November 1991, Mrs P began employment with the Council. She became eligible to join the LGPS, which she did in April 1993.
5. In April 2006, Mrs P's employment was transferred, under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**), to Homes for Haringey, an organisation at arm's length to the Council. Mrs P remained a member of the LGPS.
6. On 31 August 2012, Mrs P took flexible retirement. She received a tax-free cash lump sum of £15,565.33 and an annual pension of £6,602.50, based on 18 years and 235 days pensionable service.
7. Following her flexible retirement, Mrs P continued to work for Homes for Haringey, but went part time, working 29 hours per week.
8. As Mrs P remained working for Homes for Haringey, she continued to be a member of the LGPS. But, as she had taken flexible retirement, she started to accrue a

second period of membership. Mrs P's effective start date for this second period of membership was 1 September 2012.

9. On 1 May 2013, Mrs P further reduced her hours to 22 hours per week.
10. In 2013, an annual benefit statement was issued to Mrs P. This was incorrect as it was based on incorrect salary information. In addition, the start date of Mrs P's employment when she began working for Homes for Haringey, was recorded as 2006, rather than the correct date of 1 September 2012, when her flexible retirement took effect.
11. Mrs P contacted the LGPS to correct her salary details, but the incorrect start date was not amended at the same time. Consequently, the annual benefit statements sent in 2014, 2015 and 2016 were all overstated and illustrated the incorrect level of benefits.
12. In July 2016, Mrs P started making enquiries about voluntary redundancy as she had been put on notice that her role was at risk. Mrs P requested an illustration of her estimated pension benefits, as she was unable to use the LGPS's online forecasting tool to generate an illustration herself.
13. On 3 August 2016, a retirement quote was sent to Mrs P. However, the quote that was issued also used the incorrect start date. So the illustrated, estimated, benefits of an annual pension of £4,838.04 and a retirement grant of £2,469.02 were also incorrect.
14. On 21 October 2016, Homes for Haringey wrote to Mrs P to confirm that her voluntary redundancy had been accepted. The letter confirmed that in consideration of her redundancy Mrs P would receive a redundancy payment of £19,403.50. The letter also confirmed: -

 "...you are able to withdraw your application for voluntary redundancy at any time up to and including your last day of service which is agreed to be 13 January 2017."
15. On 25 November 2016, a formal illustration of Mrs P's pension benefits was sent. Because a formal illustration had been produced, this was checked against Mrs P's records, so the error with the recorded length of service was identified. The illustration correctly quoted that Mrs P was entitled to an annual pension of £1,744.63 and that no retirement grant was payable.
16. Mrs P has said it was not until 1 December 2016, that she received the retirement quote dated 25 November 2016.
17. On 15 December 2016, Mrs P contacted Homes for Haringey to complain about the incorrect information she had received.
18. On 13 January 2017, Mrs P's employment ended as a result of voluntary redundancy.

Summary of the Council's position

19. The Council has acknowledged that it had provided Mrs P with incorrect information. However, it said pension members have a duty to check the figures that are quoted, and to notify the Council of any errors if the information appears to be incorrect.
20. There is no legal basis on which the Council can pay Mrs P benefits, other than those to which she is entitled.
21. In recognition of the distress and inconvenience caused by the provision of incorrect information, the Council has offered Mrs P £500.

Summary of the Mrs P's position

22. Mrs P says the Council provided incorrect and misleading information over a prolonged period of time. This led her to believe that she was entitled to the pension that had been quoted in error. She made the decision to retire based on this.
23. Due to the Christmas break, it was not possible for Mrs P to reverse her decision to apply for voluntary redundancy.
24. In reliance of the incorrect information received, Mrs P purchased a car and so has detrimentally changed her position.

Adjudicator's Opinion

25. Mrs P's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised briefly below: -
 - It has not been disputed that the Council provided incorrect information to Mrs P. However, the provision of incorrect information does not, by itself, entitle Mrs P to the amount quoted in error. There are three key considerations which are central to this dispute: did the misstatement create an entitlement to the benefits quoted in error; did Mrs P rely on the incorrect information when deciding whether to apply for voluntary redundancy and, if so, was this reliance reasonable; and, has Mrs P detrimentally changed her position as a result of the incorrect information such that it would now be unconscionable for the Council to refuse to pay the level of benefits quoted in error?
 - It is accepted that the annual benefit statements sent in 2014, 2015 and 2016, all illustrated the incorrect level of benefits. However, all the annual benefit statements made it clear that the figures were illustrations only and were not guaranteed. The covering letters, enclosing the annual benefits statements, all cautioned: -

“Important- This is not a document of title. The amounts shown are an illustration... These benefits therefore can not [sic] be relied on. An estimate if required for a specific reason will be sent on request.” (Original emphasis).

- Similarly, the retirement quote which was sent to Mrs P on 3 August 2016, also warned, in a bold typeface and set out prominently within the main body of the document, that: -

“The benefits quoted have not been subject to our normal checking procedures... they should therefore not be relied on for any specific purpose without written confirmation from the Pensions Team.”

- Although incorrect information was provided to Mrs P over a prolonged period, and so will have created a loss of expectation, no entitlement arises from this misinformation. This is because the Council made it clear that none of the figures quoted were to be relied upon.
- The overstated retirement quotes may well have influenced Mrs P’s decision to take voluntary redundancy. But this is unlikely to have been her sole consideration or the driving factor behind her decision. Instead it seems likely that Mrs P’s desire to spend time with her ill husband and to care for her grandchildren will have been a significant consideration. This is supported by the fact that she had already taken flexible retirement, returning to work on a part time basis, and then subsequently reduced her working hours further.
- In addition, the availability of a suitable role, had Mrs P intended to stay in employment, would also be a consideration. In relation to this Mrs P has said: -

“My post had been deleted and the only job suitable for myself was two whole grades lower and therefore a much reduced salary for a job that I had been doing extremely well for the past sixteen years.”

- It is unlikely that had Mrs P known her correct pension entitlement, her desire to remain in work would be so strong that she would accept a role for considerably less pay. On the balance of probabilities, it is more likely that Mrs P would have taken voluntary redundancy even if she had been aware of the correct pension entitlement. In reaching this view the Adjudicator noted that Mrs P received a not insignificant sum, amounting to around £19,400, in respect of her redundancy. So, it was more likely than not that receipt of such an amount of money would have been a major factor in Mrs P’s decision making process.
- Further, there is no evidence that Mrs P made any enquiries about withdrawing her voluntary redundancy application or seeking alternate employment elsewhere, when she found out the correct level of pension. Although Mrs P has commented that she did not have sufficient time to consider her options, because of the Christmas break, she was able to withdraw her application right up to her last day of employment. So, Mrs P had sufficient time to at least make enquiries about

withdrawing her application. The Adjudicator was of the view that Mrs P would have applied for voluntary redundancy regardless of the value of her pension benefits.

- Mrs P has argued that she has changed her position because of the decision she made to purchase a new car, which was made based on the information she received. But, in this case, that decision is not irreversible. There is a readily available second-hand market for cars, thus it is possible for Mrs P to easily unwind the transaction she made by selling the car.
- In relation to the proposal that Mrs P could sell her car she has said: -

“Selling my car would cause me further stress and inconvenience as I care for four small grandchildren and would need to lose money on the sale and again purchase a cheaper car.”
- However, the fact Mrs P is reliant on the use of a car when looking after her grandchildren, and the fact that she would purchase a cheaper car indicates that it was always her intention to purchase a car of some sort.
- Further, the invoice for the car pre-dates the confirmation that her voluntary redundancy had been accepted, strongly indicating that Mrs P had the financial means to purchase the car before receiving her redundancy and pension payments. The Adjudicator concluded that Mrs P would have bought the car regardless of the Council’s misstatement.
- Mrs P is only entitled to the correct level of benefits payable under the LGPS regulations. She does not have any entitlement to the higher level of benefits which were overstated by the Council in error.
- That said, the provision of incorrect information will have caused Mrs P a loss of expectation. But the £500 offered by the Council in respect of this non-financial injustice provides an adequate award in recognition of this. The Adjudicator recommended that Mrs P should contact the Council directly if she wanted to accept the £500 it has offered her.

26. Mrs P did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mrs P provided her further comments which are summarised below: -

- The Adjudicator is incorrect to assume that Mrs P would, in any event, have taken voluntary redundancy to care for her husband and look after her grandchildren. Mrs P says it is, “very distasteful and inappropriate” that this has been included in the Adjudicator’s findings.
- Mrs P and her husband both lead very active lives with separate hobbies, so the assumptions that have been drawn are, “completely inaccurate.” Further, Mrs P had already reduced her hours to care for her grandchildren, so it is, “abundantly clear that they are irrelevant to [her] decision to take voluntary redundancy.”

- If Mrs P had been provided with the correct information she, “probably would have decided to take the reduced salary position for x years and grown [her] pension pot.” Mrs P says had she stayed in employment for a further 10 years, she would have received income of around £200,000 along with a substantial increase in pension benefits. This is significant when compared with the income of around £36,400 she will receive over the same period having taken voluntary redundancy.
- Mrs P did not withdraw her voluntary redundancy application as she, “had every reason to believe that a financial solution would be achieved as mistakes had been admitted and [she] was awaiting a response to [her] stage 1 complaint.”

27. Mrs P’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 Mrs P for completeness.

Ombudsman’s decision

28. Normally when an individual has been provided with misinformation concerning their pension scheme benefits, they are only entitled to their correct entitlement from the pension scheme. In considering Mrs P’s complaint, I must assess to what degree she relied on the information and how she might have acted differently, if she had been aware of the true situation. Where there is a dispute about what an applicant would have done had they received correct information, I must make my findings based on the balance of probabilities. In other words, I must judge what is most likely to have happened taking all the facts into consideration. In Mrs P’s case this includes assessing whether there are any other factors, such as her husband’s health and her childminding responsibilities, which may have influenced her decision to take voluntary redundancy.
29. A key consideration for me is that Mrs P did not rescind her application for voluntary redundancy, even after learning of the true position. I acknowledge that Mrs P has said that the Christmas bank holidays and the fact that she had a complaint under consideration meant that she could not do this. But I take the view that Mrs P could at least have made enquiries about withdrawing her voluntary redundancy application. The fact that she did not, and that she proceeded with the voluntary redundancy application in full knowledge of the true position, means that it would be very difficult for me to conclude that she relied on the misinformation to her detriment.
30. Further, I do not consider it was reasonable for Mrs P to have relied on the information which was provided in error. Since Council made it clear that none of the figures quoted were guaranteed.
31. Mrs P is only entitled to receive the benefits provided for under the regulations that govern the LGPS. The difference in the quoted levels of pension benefits does not represent actual financial loss, because Mrs P was never entitled to the higher benefits quoted in error. What she has suffered is a loss of expectation.

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32. Where there has been an error resulting in a loss of expectation, which causes significant distress and inconvenience, I might ordinarily direct an award for non-financial injustice. But in this case, I find that the £500, already offered by the Council is appropriate, so I make no further award.
33. Therefore, I do not uphold Mrs P's complaint. Mrs P should contact the Council directly if she now wishes to accept the £500 it has offered her.

Anthony Arter

Pensions Ombudsman
9 April 2018