

Ombudsman's Determination

Applicant	Mr S
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Peninsula Pensions

Outcome

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

Complaint summary

3. Mr S' complaint is that his pension benefits had been incorrectly overstated in the estimate of benefits dated 2 March 2016. Mr S says that he decided to take early retirement on his 60th birthday, 28 October 2016, based on the incorrect information given to him by Peninsula Pensions.
4. On the expectation of receiving the higher amounts quoted in error, he says that he also made a number of purchases, including a "special" family holiday, the refurbishment of his bathroom and replacing his wife's car, which he would not have done if he had been given the correct figures.

Background information, including submissions from the parties

5. As a member of the LGPS, Mr S had two periods of pensionable service with two different employers. The first period of service was with a local authority (**the Council**) covering the period from 1990 to 2008. Mr S was made redundant from the Council on 30 April 2008 and in accordance with the LGPS Regulations at the time he received his pension unreduced. Mr S' pension in respect of his employment with the Council was calculated on a total service of 17 years and 203 days.
6. On 2 June 2008, Mr S started employment at a sixth form college (**the College**), another employer within the LGPS. On setting up Mr S' new pension record, Peninsula Pensions made an administrative error by including his previous service with the Council, despite the fact he was already receiving a pension for that service. Peninsula Pensions marked this service as "Qualifying", when it should have been

noted as “Unaggregated”. This resulted in the service of 17 years and 203 days counting towards his pension under the College record.

7. Following on from this error, the annual benefit statements issued to Mr S since the start of his College membership have all been incorrect. In the 2009 benefit statement, there was a section detailing the then present value of his benefits assuming service up to 31 March 2009. This section included the following information:-

“Total 80ths Membership - 17 years 203 days
Total 60ths Membership - 0 years 333 days
Total Membership - 18 years 171 days
Total pension - £4,904.10
Scheme Lump Sum - £13,758.99”.

8. In the 2010 benefit statement, there was a similar section which provided the following information:-

“Total 80ths Membership - 17 years 203 days
Total 60ths Membership – 1 years 333 days
Total Membership - 19 years 171 days
Total pension - £5,461.77
Scheme Lump Sum - £14,307.40”.

9. The 2011 benefit statement provided the following information:-

“Total 80ths Membership - 17 years 203 days
Total 60ths Membership - 2 years 333 days
Total Membership - 20 years 171 days
Total pension - £5,913.77
Scheme Lump Sum - £14,527.97”.

10. The 2012 benefit statement provided the following information:-

“Total 80ths Membership - 17 years 203 days
Total 60ths Membership - 3 years 334 days
Total Membership - 21 years 172 days
Total pension - £6,282.83
Scheme Lump Sum - £14,528.60”.

11. On all of the annual benefit statements, Mr S’ pensionable service in relation to his previous employment at the Council was shown as 17 years 203 days under “total 80ths membership.” This was explained to him in the 2014 benefit statement in the following terms:-

“Up to 31 March 2008 benefits are calculated as $\frac{1}{80^{\text{th}}} \times \text{Membership} \times \text{Full-Time Equivalent Pensionable Pay}$ with an automatic Retirement Lump Sum. From 1 April

2008 to 31 March 2014, benefits are calculated as $1/60^{\text{th}} \times \text{Membership} \times \text{Full-Time Equivalent Pensionable Pay}$ but no automatic Retirement Lump Sum.”

12. The 2014 benefit statement also provided the following information:-

“Value of Benefits at 31 March 2014

Membership to 31 March 2014 - 23 Years 171 days

Annual Pension - £7,118.89

Retirement Lump Sum - £14,738.67”.

13. On 11 January 2016, Mr S booked a family holiday for his 60th birthday at the end of October 2016. The purchase price of the holiday, including flights and accommodation, was £3,285.78.
14. In February 2016, Mr S was approached by his manager at the College and given the following options:-
1. Stay in his existing role, but take on additional responsibilities with some extra training provided.
 2. Move to a different role and take a drop in salary.
 3. Take early retirement.
15. On 11 February 2016, Mr S requested an estimate of his pension benefits if he retired early on his 60th birthday. Whilst he was waiting for a reply from Peninsula Pensions, the College confirmed that, if he decided to retire in October 2016, there would be no change to his salary.
16. On 2 March 2016, Peninsula Pensions responded to Mr S’ request and issued an estimate of benefits via the College. The estimated standard benefits were:-
- “Pension = £8,420.25 per annum
- PLUS
- Lump Sum Retiring Allowance = £15,186.30”.
17. In the letter which accompanied the above figures, Peninsula Pensions said:
- “Please note that these figures are an estimate only and do not confer any contractual right to payment.”
18. The estimate of benefits dated 2 March 2016 contained the same error as the previous annual benefit statements. Mr S’ pensionable service with the Council was added to his pension record under the College.
19. Mr S says that he decided to take early retirement on his 60th birthday, 28 October 2016, based on the incorrect figures given to him on 2 March 2016. Mr S has also referred to his total expenditure of £5,268.89 on the refurbishment of his bathroom, which took place at the end of July 2016.

20. During the summer of 2016, Mr S requested the transfer of his benefits from a personal pension plan into the LGPS. The transfer was completed in November 2016, allowing him to purchase additional benefits in the LGPS. Following this transfer and the formal notification of his retirement from the College, Peninsula Pensions calculated the final benefits payable to Mr S. At this point, Peninsula Pensions noticed the administrative error that was made back in 2008 and ensured that his final options did not include the pre-2008 service. After the error had been rectified on 15 November 2016, Mr S was given the option of taking an annual pension of £5,934.53 with no lump sum.
21. Mr S' position at the College had already been filled when he returned from holiday to discover that an error had been made with the figures provided on 2 March 2016. He acknowledges that he did not try to get his job back or look for a similar alternative.
22. On 28 November 2016, Peninsula Pensions sent Mr S a letter of apology and an explanation of the error. He then raised a formal complaint about the discrepancy in the estimate provided in March 2016 and the final amount payable to him.
23. At the beginning of December 2016, Mr S purchased a car as he believed that his complaint would be resolved quickly and that the figures provided in March 2016 would eventually be honoured.
24. In response to his complaint, Peninsula Pensions said that it is not permitted to pay scheme members more than their actual entitlement and it is unable to honour the estimate figures of 2 March 2016. However, in recognition of the distress and inconvenience caused by the error, Peninsula Pensions offered Mr S the sum of £1,500 in full and final settlement of his complaint.
25. Mr S did not accept the offer and he has referred his complaint to us for an independent review.

Adjudicator's Opinion

26. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Peninsula Pensions. The Adjudicator's findings are summarised briefly below:-
 - In cases where incorrect information has been given to a member about the level of benefits payable under the pension scheme, the general principle is that the member is only entitled to the actual amount of benefits he/she has accrued under the scheme rules, that is, those based on the correct membership credit accrued under the scheme. The member is not entitled to the figures overstated in error.
 - When Mr S received his first statement in 2009, in respect of his new employment at the College, he should reasonably have noticed that a total membership of 18 years and 171 days could not be right as he had only been

working for about one year. Given that Mr S was already in receipt of his pension for his pre-2008 service, it is reasonable to say that he should have queried why the membership of 17 years and 203 days was being included in his annual statements.

- The error would have been most noticeable in the 2009 statement, at the early stages of Mr S' service at the College, because the payment of his pension for pre-2008 service would have been a relatively recent event and an annual pension of £4,904.10 seems implausible for just 12 months of service.
- The error continued on the subsequent annual statements and Mr S had more than one reasonable opportunity to recognise that his statements were including a period of service for which he was already receiving a pension.
- Mr S says that he decided to retire early based on the figures given on 2 March 2016. However, Mr S acknowledges that he did not try to get his job back or look for a similar position, once the error was brought to his attention. Therefore, it is possible that he may have taken early retirement, even if the correct figures had been provided.
- In relation to Mr S' holiday purchase, this was booked in January 2016, two months before the estimate of benefits which he says he relied on. Mr S then purchased a car in December 2016, after the error was brought to his attention. Therefore, on balance, it seems likely that Mr S would have made these purchases, irrespective of the March 2016 figures, particularly as he did not take any steps to mitigate his position by attempting to cancel these purchases.
- In relation to the refurbishment of his bathroom, this did take place after the estimate of benefits dated 2 March 2016. However, it cannot reasonably be said that Mr S has incurred a financial loss, because the improvement to his bathroom would in all likelihood have increased the overall value of his property.
- In terms of non-financial injustice, Peninsula Pensions' offer of £1,500, for distress and inconvenience, is a reasonable settlement to this complaint.

27. Peninsula Pensions agreed with the Adjudicator's Opinion and made no further comments.

28. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments in the emails dated 24 January 2018 and 30 January 2018, but these do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

29. In summary, Mr S said:-

- It seems like the error was discovered in the summer of 2016. If he had been told immediately, he may have been in a position to negotiate returning to his previous role.
- He did not try to return to his previous job because the position had already been filled. He left the College in July 2016 at the end of term. It was not until November 2016 that he found out about the error.
- He noticed on the statements the references to his previous service at the Council but assumed that Peninsula Pensions were referring to his total membership of the LGPS, and not just his employment at the College. In most of his conversations with Peninsula Pensions, he was told that “pensions are complex” and he just assumed the figures were correct. It is only with the benefit of hindsight that he has found that mistakes can be made.
- If he had been given the correct figures, retirement would not have been an option for him, due to the ill-health of his family. Since leaving the College, he has been working as a self-employed gardener and he recently had a job at a toy shop during the Christmas period.
- The holiday was booked two months before the pension estimate of March 2016. At that time, he was in full-time employment and he had no reason to think that he would not be at any point in the future. The money for the refurbishment of his bathroom came from his savings.

Ombudsman’s decision

30. In his reply to the Adjudicator’s Opinion, Mr S has acknowledged noticing on his annual statements the references to his past pensionable service at the Council. Furthermore, Mr S was already in receipt of his pension in relation to that period of service. In these circumstances, I consider it reasonable to have expected Mr S to have, at the very least, queried whether or not the quoted pension and lump sum figures were based on his correct membership accrued under the LGPS.
31. Whilst I accept that pensions can be complex, Mr S ought reasonably to have questioned whether a total membership of 18 years and 171 days could be correct, because he had only been working for about one year at the time. Mr S then had further opportunities to identify that his annual statements were erroneously including a period of service for which he was already receiving a pension.
32. For these reasons, I do not find that it was reasonable for Mr S to subsequently rely on the estimate of benefits dated 2 March 2016, to make the type of financial decisions which he says he has made. In conclusion, Peninsula Pensions’ offer of £1,500, in recognition of the error dating back to 2008, is a very reasonable

PO-17016

settlement to this complaint and I will leave it to Mr S to accept this offer should he wish to.

33. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
13 February 2018