

Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pensions Scheme (LGPS)
Respondent	Northumberland County Council (NCC)

Outcome

1. Mr N's complaint against NCC is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) NCC should pay Mr N £500 for distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained that NCC have said he is not able to transfer his benefits to another provider.

Background information, including submissions from the parties

4. In 2015, NCC, Mr N's employer, was considering whether to make him redundant or not, through a redundancy programme. NCC sent a Redundancy estimate of Mr N's entitlement under the LGPS, should his employment cease on redundancy grounds, this was based on him being made redundant on 31 July 2015.
5. The consultation period was extended by a short period and Mr N was made redundant on 4 August 2015. But, it was not until 23 September 2015, that NCC sent the "Pensions Booklet – Leavers Guide", this included the option to transfer benefits to another provider. It also enclosed the relevant forms for Mr N to complete so he could start receiving his benefits.
6. On 28 September 2015, NCC sent a further letter that explained Mr N would start receiving his benefits once he returned the forms to claim his benefits. Mr N did not want to claim his lump sum and benefits from the LGPS, at this stage, as he believed there were other options available to him.

7. In December 2015, Mr N sought assistance from an independent financial adviser (IFA). On 23 December 2015, Mr N's IFA contacted NCC and requested full details of the options available to him.
8. The initial letter was not dealt with, so the IFA sent a further request and included Mr N's letter of authority to allow the NCC to deal with the IFA directly. The IFA asked NCC to provide a transfer value. On the same day NCC said that a transfer would not be possible, as Mr N was only entitled to receive immediate payment of his benefits because he was over the age of 55 and his employment ceased on the grounds of redundancy.
9. On 21 March 2016, Mr N raised a complaint as he was not able to transfer. He said he wanted to use the transfer value to bridge the gap from redundancy to state pension age, and the lump sum and residual amount would not cover this.
10. On 23 March 2016, NCC addressed the complaint and said under the Local Government Pension Scheme Regulations 2013 (**the Regulations**), that govern the LGPS, it was a requirement for Mr N's benefits to go into immediate payment.
11. Mr N remained dissatisfied and brought his complaint to the Pensions Ombudsman to be independently reviewed.

Adjudicator's Opinion

12. Mr N's complaint was considered by one of our Adjudicators who concluded that NCC should award Mr N £500 for distress and inconvenience. The Adjudicator's findings are summarised briefly below:-
 - Under section 30(7) of the Regulations (shown as an appendix to the Determination), it states that if a person is made redundant at the age of 55 or over, the only option is to start receiving immediate payment of the pension under the LGPS. NCC are interpreting the Regulations correctly and have not done anything wrong in making the decision not to allow a transfer.
 - The information that was sent to Mr N on 23 September 2015, would have been misleading and led him to believe other options were available to him. This meant he sought financial advice and spent a number of months with his benefits not in payment when they ought to have been. Therefore, NCC should pay Mr N £500 for the distress and inconvenience he has been caused.
13. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
14. Mr N provided the following comments:
 - When the consultation process began he was more concerned about saving his job than how he would receive his benefits.

- He already had a rough idea of the value of his pension and had been informed in the letter that he was "eligible" for early release of his pension in a redundancy situation. Being "eligible" to receive his pension is not the same as "must take".
- He could have done whatever he liked with his pension at any time during the 45 day consultation period or the following six week notice period, whilst still employed by NCC, had he been in possession of the correct information which NCC failed to supply.

15. NCC accepted the Adjudicator's Opinion.

16. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

17. Mr N's complaint is that NCC say he is not able to transfer his benefits to another provider because he was over the age of 55 when his employment was terminated on the grounds of redundancy.
18. NCC are required to pay benefits in accordance with the Regulations, which clearly state that "where an active member who has attained the age of 55 or over is dismissed from an employment by reasons of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of a retirement pension." Mr N was over age 55, and was made redundant he therefore had no option but to take his benefits immediately from the LGPS.
19. Mr N does not dispute that he had been informed that he was "eligible" for early release of his pension in a redundancy situation. He contends however that being eligible to receive his pension is not the same as having no other option but to take his benefits immediately.
20. In my view the information given to Mr N was misleading and did give the impression that there were other options. However, Mr N says that although he knew the approximate value of his pension under the LGPS during the consultation period, the option of taking the benefits was not in the forefront of his mind. He says he was more concerned in trying to save his job. Whilst I accept that for Mr N retaining his employment would have been a high priority I note that the Redundancy estimate, does suggest that Employee Services should be contacted should there be any questions concerning his pension benefits. This should have highlighted to Mr N the need, at least, to consider if there were the options open to him in relation to his retirement benefits.
21. Conversely, Mr N says that if he had been made aware during the redundancy consultation period, that he would have no option but to take his benefits on redundancy, he would have transferred his benefits whilst he was still employed by

NCC. Opting out of the LGPS and requesting a transfer might have been an option for Mr N whilst he was still employed by NCC. But in my view his argument that his main priority was to keep his employment, does not support a view that he would have taken this action.

22. Although I sympathise that Mr N was sent information in September 2015, which led him to believe his pension could be transferred, this is a loss of expectation as opposed to a financial loss. Mr N will still receive his entitlement under the LGPS.
23. As a result of the misleading information sent by NCC, I consider an award of £500 for distress and inconvenience should be paid to Mr N.
24. Therefore, I partially uphold Mr N's complaint.

Directions

25. Within 21 days of this determination NCC are to pay Mr N £500 for the distress and inconvenience he has suffered.

Karen Johnston

Deputy Pensions Ombudsman
19 October 2017

Appendix

The Local Government Pension Scheme Regulations 2013

30 (7) where an active member who has attained the age of 55 or over is dismissed from an employment by reasons of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of –

- (a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State; and
- (b) Any other retirement pension relating to that employment payable under these Regulations, without reduction.

5 Ending active membership

- (1) A person ceases to be an active member in an employment if that person ceases to be eligible for membership of the Scheme through that employment and membership in that employment ceases from the date that eligibility ceases.
- (2) A person ceases to be an active member in an employment from the date specified in a written notice given by that person to that person's Scheme employer that the person wishes to leave the Scheme.
- (3) But an active member who gives notice under paragraph (2) specifying no date, or a date earlier than the date the notice is given, ceases to be an active member in that employment at the end of the payment period during which the notice is given.
- (4) A person ceases to be an active member when that person attains the age of 75.
- (5) A person who, by virtue of a written notice given under paragraph (2), ceases to be an active member before being an active member for three months is to be treated as not having been an active member.