

Ombudsman's Determination

Applicant	Mrs M
Scheme	LGPS (the Scheme)
Respondent	City and County of Swansea (CCS)

Outcome

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

Complaint summary

3. Mrs M's complaint against CCS concerns the deduction of the Retained Pay Agreement (**RPA**), from her pension.

Background information, including submissions from the parties

4. Mrs M was previously employed by the Neath Port Talbot County Council (**the Council**). CCS is the body responsible for investigating complaints against the Council.
5. During 2013, due to financial constraints, the Council implemented cost saving measures. As part of this, the Council and some Trade Unions (**the Unions**) agreed to an RPA.
6. The RPA was an agreement that employees would sacrifice 50% of their salary increases. Therefore, if they were entitled to a 1% increase on their salary, they would receive 0.5% and the Council would keep the other 0.5%.
7. Mrs M said that her union was not part of the group of unions who had signed the agreement referred to as the 'Green Book'. However, she said that her union was told that in order for it to be a part of the '**Green Book**', it and its members had to accept the RPA.
8. The RPA commenced in September 2014 and it was for a period of four years.

9. At the time that the RPA agreement was implemented, Mrs M was an active member of the Scheme. Mrs M's pension is based on her actual pensionable pay.
10. The Scheme is governed by the Local Government Pension Scheme Regulations 2013 (**the Regulations**). Regulation 20 of the Regulations defines a member's pensionable pay and states:

“(1) Subject to regulation 21 (assumed pensionable pay), an employee's pensionable pay is the total of -

all salary, wages, fees and other payments paid to the employee, and

any benefit specified in the employee's contract of employment as being a pensionable emolument.”
11. Mrs M retired on 31 December 2016. The RPA was still in force at the time. Mrs M asserts that when she received her pension benefit option form, she queried the figures with the Council's payroll department and was informed that RPA was being deducted from her pension. Mrs M asserts that this was the first time that she became aware of the reduction being applied to her pension.
12. Unhappy that the RPA was being deducted from her pension, Mrs M complained through both stages of the Scheme's internal dispute resolution procedure (**IDRP**).
13. Mrs M's complaint was not upheld at either stage of the IDR. In the IDR two response dated 3 August 2017, CCS explained the purpose of the RPA and said:

“The relevant regulations are the *Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007* (the 'Benefit Regulations'), and specifically Regulation 10 of those Regulations; and the *Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014* (the 'Transitional Regulations').”
14. CCS noted that the Benefit Regulations were revoked by Regulation 2 and Schedule 1 of the Transitional Regulations which came into force on 1 April 2014. However, it said:

“There are saving provisions under the Transitional Regulations to the effect that the Regulations provide that from 1 April 2008, any member having a pay cut or restriction in respect of prescribed circumstances has the right for 10 years to choose the best average of any consecutive three years in the last 13 years of membership. The 13 years all end on 31 March rather than the anniversaries of the date of leaving. This right continues to apply even where the pay cut or restriction occurs after 31 March 2014.”
15. CCS explained that the restriction of a pay award is not covered by Regulation 10 of the Benefit Regulations unless it forms a part of the employee's contract of employment. The evidence it had, did not show that the RPA was incorporated in Mrs M's contract of employment. Therefore, it was unable to uphold her appeal.

16. Dissatisfied with the IDRP responses, Mrs M referred her complaint to this Office and said the salient points of her complaint are:-

- When the RPA was introduced by the Council, she was verbally assured by her union that it was for a limited time.
- She was informed that the RPA payments would not affect her pension.
- Since retirement, the RPA is up for negotiation and colleagues will no longer have RPA deducted from their salaries, but she will have them deducted from her pension for the rest of her life.

17. In response to the complaint, CCS made the following comments:

- The RPA was in place from September 2014 to August 2018. The RPA would have been deducted from Mrs M's pensionable pay during the above period, before Mrs M's retirement on 31 December 2016.
- The agreement for employees to forego 50% of their salary increases meant that Mrs M's pensionable pay was reduced and her pension is calculated on actual pensionable pay.
- Pension is based on an employees' final salary for service up to 2014 and from actual earnings since April 2014. Whatever an employee earns in their final year will form part of the calculation for service up to 2014. Therefore, any employee who has taken a reduction in salary in the last year of their employment, due to the RPA being introduced, will have a reduction in their final salary figures.
- Their CARE figures are also reduced so all employees will see a reduction in CARE during the period that RPAs are paid as their pensionable pay is less. Whatever figures are calculated on termination will be the pension figure for Mrs M, as it is based on actual contributions during her employment.
- Mrs M's pay was an amount which included a 0.5% pay increase, but the remaining 0.5% of the nationally agreed award was to be retained by the employer. In effect, there was no deduction from Mrs M's salary. Mrs M's salary simply did not include a percentage of the national agreed pay award.
- Mrs M's pension is calculated on the basis of the amount of pay Mrs M received, that is her pensionable pay. The meaning of pensionable pay is as set out in Reg 20 of the Local Government Pension Scheme 2013, and Reg 21 sets out the circumstances when pensionable pay is assumed. This does not include the situation in which Mrs M finds herself. The pension benefits are to be calculated on the basis of pensionable pay in accordance with the Regulations.

Adjudicator's Opinion

Mrs M's complaint was considered by one of our Adjudicators who concluded that no further action was required by CCS. The Adjudicator's findings are summarised below:-

- Mrs M retired on 31 December 2016. The RPA was still in force at that time. Therefore, this had an impact on her final pensionable pay.
 - The Council has said that "The agreement to contribute 50% of the salary increase meant that Mrs M's pensionable pay was reduced and her pension is calculated on actual pensionable pay."
 - Mrs M asserts that the RPA is up for negotiation and colleagues will no longer have RPA deducted while she will have it deducted from her pension for the rest of her life. The Adjudicator sympathised with Mrs M's disappointment that the RPA has affected her pension, when RPA was only a temporary measure.
 - A member's pension is based on their actual pensionable pay. Therefore, some colleagues who retire after the RPA expires may be in receipt of a higher pension when they retire as RPA would no longer affect their pensionable pay. This is of course the position of anybody who subsequently retires whose final pensionable salary is improved by whatever percentage pay increase is awarded that year.
 - The Adjudicator appreciated that Mrs M said that she was verbally informed by her union that the RPA would not affect her pension. However, the Adjudicator said she was unable to hold the Council accountable for what Mrs M's union had informed her verbally.
 - In the Adjudicator's opinion, Mrs M's pension was calculated in accordance with the Regulations. Therefore, she did not consider there was any maladministration by the Council.
18. Mrs M did not accept the Adjudicator's Opinion and in response provided copies of her pension statements and payslip. She also made the following comments:-
- She was advised by her union that she should accept the pension figures and that an appeal on the RPA would follow.
 - When the RPA deduction was put to members of her union, they were informed that the payment would not affect their pension and would not affect the top line on their payslips. Indeed, the RPA appeared on the pay slips as a deduction. All members of her union were present when this was said by the union representative and these colleagues are willing to testify to this.
 - The Council's pay roll department went through the figures on the pension statement with her and explained where the RPA deduction was. It is not referenced on the statement as RPA reduction.

PO-18489

- The Council's payroll department told her that her final pensionable wage included the RPA deduction.

19. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs M for completeness.

Ombudsman's decision

20. Mrs M is unhappy that the RPA has affected her pension.

21. Mrs M's pension is based on her pensionable salary so Mrs M's pensionable salary was affected by the RPA, and this has had an impact on her benefits at retirement.

22. Mrs M retired while the RPA was still effective, so her pensionable salary was less than what it would have been without the deduction of the RPA and this will have an ongoing impact on her pension

23. To be clear RPA is not being deducted from Mrs M's pension., it is the effect that it had on her pensionable salary, prior to her retirement, that has affected her pension.

24. I do not doubt Mrs M's recollection of what she asserts she was told by her union, however, she was never informed by the Council, verbally or in writing, that the RPA would not affect her pension benefits.

25. Therefore, while I appreciate that Mrs M is disappointed that she is receiving a lower pension than she believed she is entitled to, I do not find that this is due to the Council's maladministration.

26. Therefore, I do not uphold Mrs M's complaint.

Anthony Arter

Pensions Ombudsman
15 October 2018