

## Ombudsman's Determination

Applicant	Mrs H
Scheme	Local Government Pension Scheme (the <b>LGPS</b> )
Respondents	Walsall Metropolitan Borough Council ( <b>Walsall MBC</b> ) West Midlands Pension Fund ( <b>the Fund</b> )

## Outcome

1. I do not uphold Mrs H's complaint and no further action is required by Walsall MBC and the Fund.

## Complaint summary

2. Mrs H's complaint against Walsall MBC and the Fund, is about the refusal to allow her to access her pension benefits without reduction, following the termination of her employment. She says that, on 14 March 2017, Walsall MBC misled her into leaving her employment, giving her the expectation that she would be able to take her pension without reduction.

## Background information, including submissions from the parties

3. On 1 July 1989, Mrs H joined the LGPS through her employment with Dudley Metropolitan Borough Council. She became a deferred member when she left the LGPS on 20 September 1992.
4. On 1 September 2004, Mrs H re-joined the LGPS via employment with Serco, which was then transferred to Walsall MBC on 1 April 2013.
5. During 2015 and 2016, Walsall MBC wrote to all employees about proposals to change employment terms and conditions.
6. On 17 October 2016, Walsall MBC wrote to Mrs H with an offer to vary her contract. It said that if an agreement could not be reached with her, "this will result in a further letter dismissing you from your current contract with notice, and offering you a new contract on these new terms". It asked for a response by 4 November 2016, and said the new contract would be effective from 1 April 2017. In essence, the main changes

were to do with essential car allowance lump sum payments and rates, and a pay freeze.

7. On 15 December 2016, Mrs H met with Walsall MBC but failed to reach any agreement regarding the new contract.
8. On 19 December 2016, Walsall MBC wrote to Mrs H to inform her that her employment would be terminated on 31 March 2017, on grounds of “some other substantial reason” (**SOSR**). The letter incorrectly said that she would not be entitled to take her pension or receive a redundancy payment.
9. On 28 December 2016, Mrs H appealed against her dismissal.
10. On 14 March 2017, Mrs H emailed Walsall MBC for pension illustrations covering early retirement or flexible retirement on 31 March 2017. She also made the following request:

“As my employment contract has been terminated due to ‘some other substantial reason’ (implementation of the terms and conditions proposals in order to contribute £2m to the £86m savings required by the council) as of 31 March 2017, can you please advise if this would be classed as leaving my post due to ‘business efficiency’. If so, could you please provide an illustration of pension benefits I would receive”.
11. Walsall MBC replied on the same day and said that it was unable to provide pension estimates, except in cases of redundancy. It provided an online link and asked Mrs H to register with the Fund online to generate the estimates herself.
12. On 27 March 2017, Mrs H asked Walsall MBC to delay her dismissal pending the outcome of her appeal. However, this was rejected on 29 March 2017.
13. On 30 March 2017, the Employment Appeals Committee of Walsall MBC met and upheld Mrs H’s dismissal on the grounds that suitable alternative employment had been offered to her; the change of contract was to deliver budget savings and not related to her TUPE transfer; and Walsall MBC had been proportionate in making the changes.
14. Mrs H left her employment with Walsall MBC on 31 March 2017 and became entitled to deferred benefits from the LGPS. She then complained under the Fund’s internal dispute resolution procedure (**the IDR**P). She said that Walsall MBC was refusing to pay her benefits contrary to the rules of the LGPS. Mrs H maintained that those rules qualified her for immediate payment of benefits, with no reduction for early payment, as her dismissal was for reasons of business efficiency.
15. On 10 April 2017, Mrs H wrote to Walsall MBC. She asked to retire on grounds of business efficiency from 1 April 2017 and claim her pension unreduced.

16. On 12 April 2017, Walsall MBC wrote to Mrs H stating that her employment ended on 31 March 2017 due to dismissal. It said that she was entitled to deferred pension benefits.
17. On 8 May 2017, Walsall MBC replied to Mrs H under stage one of the IDR. It said that the decision regarding termination due to business efficiency was for it to decide. While the decision to bring in the changes did consider savings to the council, it was also to bring Mrs H (and her colleagues) on par with other staff on new terms and conditions. Her complaint was not upheld, and she was given the option of appealing to the Fund.
18. On 11 July 2017, the Fund wrote to Mrs H about her complaint. It quoted Regulation 30 of the LGPS Regulations 2013 (see Appendix), and said that the decision regarding business efficiency rests with the employer. It said her dispute concerned her employment contract, not her pension. Consequently, it fell outside the IDR.
19. On 17 July 2017, Mrs H appealed to Walsall MBC. She said the Fund had declined to consider her complaint under stage two of the IDR. She disagreed with the stage one decision and said that she had been discriminated against based on her sex. She maintained that her employment was terminated on grounds of business efficiency.
20. On 30 August 2017, Walsall MBC wrote to Mrs H reiterating the earlier decision. It stated that her dismissal was not on grounds of business efficiency and denied the allegation of discrimination.
21. Unhappy with Walsall MBC's response, Mrs H brought her complaint to us for independent review.
22. In its response to Mrs H's complaint, Walsall MBC explained that talks commenced in 2015, regarding changes to employees' contractual terms and conditions. In line with this, Walsall MBC wrote to Mrs H on 17 October 2016 with an offer to vary the terms and conditions of her employment. It proposed to re-employ her, with no changes to her team's working practice, hours worked or targets. Walsall MBC has further explained that Mrs H's pay would not have been affected, although it would have meant a freeze on the anticipated increase due in September 2017. However, Mrs H failed to accept the proposed changes, and her employment was terminated on grounds of SOSR. It did not agree that Mrs H was entitled to take her pension without reduction for early payment.
23. The Fund issued the stage two IDR decision in July 2018. It apologised if Mrs H considered that she had been misled, and highlighted that the online illustrations included the following warning:

“[For] guidance only and should not be relied on without establishing the accuracy of the information contained therein, when making a decision to retire. In that circumstance you should obtain the necessary details from your employer's personnel or pensions department”.

24. The Fund pointed out that it provides various facilities for members to ask questions but there was no evidence that Mrs H had contacted it with any query. The Fund says that Walsall MBC did not indicate that Mrs H's employment would be terminated on grounds of redundancy or business efficiency. Therefore, there was no reason for Mrs H to assume that this was the case. The Fund noted that the reason for her leaving employment was for SOSR. In any case, termination on grounds of business efficiency is a matter for the employer, not the Fund.
25. Mrs H continued to insist that her contract was terminated because of business efficiency and she was excluded from a meaningful consultation about the proposals to change her terms and conditions. She does not recall if she followed the suggestion by Walsall MBC to register online with the Fund and print off the estimates, as she may have simply relied on estimates provided to her during a past redundancy exercise.
26. To put things right, Mrs H would like to receive her pension without reduction and to be compensated for the distress and inconvenience she says was caused to her.

### **Adjudicator's Opinion**

27. Mrs H's complaint was considered by one of our Adjudicators who concluded that no further action was required by Walsall MBC and the Fund. The Adjudicator's findings are summarised below:-
  - Mrs H raised issues concerning her employment with Walsall MBC and the termination of that employment. We are unable to consider such issues as they do not fall within our jurisdiction.
  - Walsall MBC's email response to Mrs H's email of 14 March 2017 did not provide any grounds for her to assume the reason for her termination was not for SOSR. Walsall MBC's email response did not address the reason for her termination or confirm that she was entitled to an unreduced pension.
  - Mrs H's email acknowledged that her employment had been terminated due to SOSR, so she was aware her termination was due to business efficiency.
  - Mrs H does not recall if she registered online with the Fund via the link provided to her by Walsall MBC or whether she relied on previous estimates provided during an earlier redundancy exercise. Mrs H had already been informed of the impending termination of her employment on 31 March 2017. So, there is no evidence that Mrs H relied on the response from Walsall MBC on 14 March 2017, or that she had suffered any loss as a result.
  - It may have been helpful for Walsall MBC to have directed Mrs H to the appropriate department regarding her enquiry about the termination of her employment. However, Mrs H seemed primarily interested in obtaining estimates which the response addressed.

- Under Regulation 30 of the LGPS Regulations 2013, Mrs H is not entitled to take her pension benefits without reduction. Accordingly, the actions of Walsall MBC and the Fund do not amount to maladministration. This means that she has not suffered any financial loss as a result of the decision by Walsall MBC or the Fund.

28. Mrs H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs H provided her further comments, but these do not change the outcome. Mrs H raised many issues in her comments, the relevant ones are summarised below:-

- Walsall MBC was seeking to make business efficiency savings and so the termination of her employment was by reason of business efficiency.
- The response from Walsall MBC to her email on 14 March 2017, was inadequate and included an incorrect link for the Fund. She says that this failure to provide procedural pension advice on accessing pension quotes is a breach of contract.
- As she did not return to work after 31 March 2017, that represented implicit consent that her employment was terminated by mutual consent on grounds of business efficiency.
- The stage one IDR decision was issued by the Executive Director (Change and Governance) instead of the Executive Director (Resources). In any event, as there is no definition of business efficiency, the decision maker cannot determine that she was not dismissed on that basis. The stage two IDR decision took too long (June 2017 to July 2018) and gave no reason for the delay. The stage two decision was also issued by the Deputy Managing Director of Wolverhampton Council instead of the Managing Director, or the Fund.
- In her termination letter of 19 December 2016, Walsall MBC incorrectly said that she would not be able to access her pension on the termination of her employment. She relied on this until March 2017, when she became aware that she could take her pension with reduction for early payment.
- Mrs H would like a wide range of remedies to compensate her for the actions of Walsall MBC and the Fund.

29. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs H for completeness.

### **Ombudsman's decision**

30. Mrs H has raised several unrelated issues in her response to the Opinion. For the sake of brevity, I will not refer to them all, but they include a previous complaint to the Information Commissioner's Office, allegations of discrimination, complaints about the change in her working conditions, and the employment appeals procedure. We are unable to address these issues as they do not fall under our jurisdiction and I make no comment about them.

31. The reason for the termination of Mrs H's employment is an employment issue which I am unable to consider. This point has been made to Mrs H already, but it is important to reiterate it once more. Mrs H has already been through Walsall MBC's employment appeal procedure, which is the appropriate avenue to raise such issues. It is not my role to review the outcome of the employment appeal or determine the basis of the termination of Mrs H's employment.
32. Mrs H says that the response from Walsall MBC on 14 March 2017, was inadequate and contained an incorrect link. I am unable to confirm whether the link provided at the time was incorrect. Mrs H would have been able to check the connection and ask Walsall MBC for the correct access. There is no evidence that she raised this as an issue at the time, and it is no longer possible to check if she was provided with an incorrect link. Even if I were to accept that the link was incorrect, that would not have represented a breach of contract as Mrs H could simply have informed Walsall MBC about the error and/or contacted the Fund directly.
33. I have not seen any evidence that Walsall MBC informed Mrs H that her employment would be terminated on grounds of business efficiency if she did not return to work after 31 March 2017. Accordingly, it was not reasonable for Mrs H to assume that she had given implied consent to her termination on those grounds by not returning to work. Walsall MBC's letter of 19 December 2016 made clear that her employment would be terminated on 31 March 2017, on grounds of SOSR, and I find no reasonable basis to decide that she was given any other reason.
34. Mrs H has raised several issues regarding the IDRPs she undertook. It is not my view that Mrs H was disadvantaged or prejudiced because of the titles ascribed to the decision makers during the IDRPs. For example, the Executive Director (Change and Governance) issued the IDRPs stage one decision instead of the Executive Director (Resources), but that was simply because of a change of designation. Walsall MBC replaced the post of Executive Director (Resources) with that of Executive Director (Change and Governance). It is equally irrelevant that the Deputy Managing Director of Wolverhampton Council issued the IDRPs stage two decision instead of the Managing Director. The stage two decision was issued by the administering authority of the Fund. So, I am satisfied that the decisions were issued by the proper delegated authorities.
35. Of more concern is that it took about a year for the stage two decision to be issued. This appears to have been due to some confusion regarding whether the Fund or Walsall MBC should deal with Mrs H's IDRPs appeal. The fund initially sent the decision back to Walsall MBC, as Mrs H was complaining about the termination of her employment which was an employment issue. After Walsall MBC reviewed the complaint, the Fund eventually dealt with stage two of the IDRPs. I find that the stage two appeal should have been dealt with more promptly. However, I am not satisfied that Mrs H has suffered significant distress and inconvenience as a result of the delay. Even though the stage two decision was issued in July 2018, Mrs H has still not taken her benefits. I have not seen any evidence that she would have acted

differently had there been no delay in dealing with her complaint under stage two of the IDRPs.

36. In the termination letter of 19 December 2016, Walsall MBC incorrectly said that Mrs H would not be eligible to take her benefits on leaving employment. Mrs H says that she relied on this until March 2017, but there is no evidence that she took any steps in reliance on this information. Mrs H did not make any decision regarding her employment until March 2017, by which time she was aware that she could take her benefits. So, although Walsall MBC provided incorrect information to Mrs H, it does not appear that she relied on it before becoming aware of the correct position. This is because Mrs H contacted Walsall MBC in March 2017, regarding taking her benefits.
37. Having considered the information provided by all parties, I do not uphold Mrs H's complaint.

**Anthony Arter**

Pensions Ombudsman  
23 September 2019

## **Appendix**

### **Local Government Pension Scheme Regulations 2013 (SI 2013/2356)**

#### Regulation 30

- (7) Where an active member who has attained the age of 55 or over is dismissed from an employment by reason 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.