

Ombudsman's Determination

| | |
|-------------|--|
| Applicant | Mr G |
| Scheme | Local Government Pension Scheme (the Scheme) |
| Respondents | London Borough of Merton (Merton) Pensions Shared Service (PSS) |

Outcome

1. I partly uphold Mr G's complaint and I direct Merton to pay an award of £500 to Mr G for significant distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr G has said that he is entitled to a refund of contributions from the Scheme, but Merton and PSS dispute this. Mr G is also unhappy that the Respondents do not hold records relating to his pension benefits, and that there were delays in dealing with his complaint.

Relationship between Merton and PSS

4. Merton has explained:

"Pensions administration is undertaken for Merton Council by the Pensions Shared Service with Wandsworth Council leading this for the London Boroughs of Camden, Merton, Richmond, Waltham Forest and Wandsworth. Merton Council has delegated to Wandsworth under Section 101 of the Local Government Act 1972 and all other enabling powers the administration of the Merton Pension Fund within the Local Government Pension Scheme.

London Borough of Merton, as administering authority is responsible for administering the Pension Fund."

Background information, including submissions from the parties

5. Mr G was employed by Merton between February 1966 and July 1966, then again from July 1969 to 1974. He was employed by another council in the interim. He was a member of the Scheme for this whole period. The Scheme rules in force at this time were the 'Local Government Superannuation Act 1937' (**the Act**) and the 'Local Government Superannuation (Benefit) Regulations 1954' (**the Regulations**).
6. The Regulations set out that, in order to qualify for retirement benefits from the Scheme, a member had to meet one of the following conditions:-
 - Member has achieved 10 years' service in the Scheme and is incapable of continuing work due to ill health
 - Member is aged 60 and has achieved 40 years' service in the Scheme
 - Member is aged 65 and has achieved 10 years' service in the Scheme
7. If a member left service without meeting any of these criteria, as was the case for Mr G, then the Act states a refund of contributions was due, unless (within 12 months of leaving the Scheme) the member returned to pensionable service in the Scheme or transferred to another local authority. Mr G did not return to pensionable service, nor did he transfer to another authority. Mr G has said that he left the UK in 1974 and Merton would not have been aware of his new international addresses or his new bank account details.
8. In 2016, Mr G contacted Merton to enquire about his deferred benefits within the Scheme. Mr G was informed that he did not hold any pension rights within the Scheme and that he would have been issued a refund of contributions upon leaving.
9. Mr G has argued the refund could not have reached him as Merton did not have his updated information, which is why he believes the Trustees of the Scheme would have been bound to hold the monies in trust for him until he made contact. Mr G has said that, believing he had pension rights within the Scheme, he did not contact Merton again until retirement age.
10. In November 2016, Mr G raised a formal complaint and invoked the internal dispute resolution procedure (**IDRP**). He complained about the lack of historic information held by the Respondents, that he was due a refund of contributions, and that PSS and Merton repeatedly ignored his emails. A summary timeline of the correspondence is in the Appendix.
11. On 13 March 2017, PSS issued the stage one IDRP decision letter. In summary, the comments were: -
 - Records were kept of liabilities where a member could not be contacted, or where refund payments were returned. Mr G's details were not contained within these records.

- Mr G did not meet the Scheme criteria for entitlement to pension benefits, so the only option upon leaving service would have been for him to receive a refund of contributions, in accordance with the Act and the Regulations.
 - Given the extended time period since Mr G's employment ended, records were not held for members unless they had ongoing or future entitlements from the Scheme.
12. On 16 August 2017, PSS wrote to HMRC to enquire about Mr G's pension rights based on his contracted-out history between 1966 and 1974.
13. Mr G applied for a stage two IDRP. Merton was responsible for this stage and, on 12 September 2017, it issued its decision letter. In summary the comments were:-
- Section 10(2) of the Act states:

"A contributory employee of an employing authority who, before becoming entitled to a superannuation allowance under this Part of this Act, ceases to be employed by them by reason of his voluntary resignation, or his resignation or dismissal in consequences of inefficiency, shall be entitled to receive out of the appropriate superannuation fund a sum equal to the aggregate amount of his contributions to the fund."
 - The relevant sections of the Act and the Regulations remained in force until replaced by the Local Government Superannuation Regulations 1974 (**the 1974 Regulations**), which came into force on 1 April 1974.
 - Given Mr G left the Scheme in January 1974, his only entitlement was to a refund of contributions.
 - Merton, as the administering authority, does not hold any records of employee refunds made to any member 40 years ago.
 - Merton does hold records for members who retain unclaimed entitlement to benefits, but Mr G is not shown on these records.
 - There is no legal requirement for Merton to hold records of a refund after six years.
 - On balance, it is more likely than not that a refund was paid to Mr G.
 - Merton recognised that there had been delays in dealing with Mr G's complaint, for which it offered an award of £250 to Mr G.
14. On 5 October 2017, HMRC responded to confirm that Mr G was a member of the Scheme from 10 February 1966 to 20 January 1974. The letter said that a Payment in Lieu (**PIL**) was made to the Department of Health and Social Security (**DHSS**) on Mr G's behalf, when he left service, which 'extinguished any liability held by the local government pension scheme'.

Adjudicator's Opinion

15. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by Merton or PSS. The Adjudicator's findings are summarised briefly below: -
- The letter from HMRC is conclusive evidence that the Scheme had no liabilities to Mr G.
 - As Mr G had no entitlement to any benefits or refund from the Scheme, Merton and PSS were not obligated to hold records for Mr G from 40 years ago.
 - The PIL made to DHSS on Mr G's behalf coincides with a refund of contributions.
 - Whilst Merton and PSS did not proactively acknowledge Mr G's emails, the Adjudicator did not consider the distress and inconvenience caused to Mr G to be significant.
16. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G provided his further comments which do not change the outcome on the matter of the refund of contributions. However, I consider that an award for non-financial injustice is merited, for reasons I will expand upon later.

Summary of Mr G's comments

17. PSS and Merton repeatedly failed to acknowledge his correspondence, and took four months to issue IDRP letters, which amounts to administrative errors.
18. He has proof he paid contributions to the fund.
19. He believes his contributions totalled £980, and would like this amount to be paid to him, with compound interest.
20. He has kept all the correspondence from the time of leaving, so if there had been correspondence about a refund, he would have that within his records.
21. The Government and the Pensions Regulator say that records must be kept, and it is also good practice for schemes to do this.
22. The HMRC letter only shows that a refund should have been made but there is no evidence the refund was actually made.
23. He would like PSS and Merton to provide evidence of the refund.
24. Legislation changed shortly after he left the Scheme, which could have confused Merton staff.
25. Given the administrative errors he has highlighted, he feels that Merton is an organisation that could make errors.

26. He did not inform Merton of his change of address as he had no reason to think that it would need to contact him until retirement.
27. The Scheme ought to have retained records until his retirement or death. He notes that more recent legislation states, "records should be retained for as long as is relevant for the purpose for which they are made"
28. A pension is a lifetime benefit so records should be kept accordingly.

Ombudsman's decision

29. A payment in lieu to the DHSS coincided with a refund of contributions. There is conclusive evidence from HMRC that the payment was made to DHSS, so it follows that the refund of contributions was made to Mr G. It may be that Mr G does not recall this, given that it was over 40 years ago, however there is sufficient evidence to conclude that the refund was paid by the Scheme.
30. With effect from 6 April 1974, it was compulsory for the Scheme to preserve pension benefits until retirement age. Mr G left the Scheme before this date so there was no such requirement. The only option at the time of his leaving the Scheme was a refund of contributions.
31. Given the time that has elapsed since the Scheme extinguished its liability to Mr G, it is not unreasonable that Merton and PSS no longer hold records for Mr G.
32. I acknowledge that the Respondents took some time to issue its IDRPs but I do not find that this was beyond a reasonable period. What I do have an issue with is that, when Mr G wrote to Merton to accept the settlement offer as a resolution to his complaint, it failed to acknowledge this. Had Merton acknowledged this, Mr G would have been satisfied with the outcome. As it stands, by omitting to respond, and denying Mr G the opportunity to resolve his complaint, Merton has caused Mr G significant distress and inconvenience.
33. Therefore, I partly uphold Mr G's complaint.

Directions

34. Within 28 days of this Determination, Merton shall pay £500 to Mr G in recognition of the significant distress and inconvenience it has caused him.

Anthony Arter

Pensions Ombudsman
23 March 2018

Appendix

Summary timeline of correspondence

| | |
|--------------------------|--|
| 21 July 2016 | Having made contact with PSS, Mr G emailed it further details such as his national insurance number, to assist with its search for his records. |
| 3 August 2016 | Mr G emailed PSS to ask for an update. |
| 15 August 2016 | Mr G emailed PSS to ask for an update. |
| 9 September 2016 | PSS emailed Mr G, apologising for the delay in responding. It explained to Mr G that there were no preserved benefits for him as he left the Scheme before 1975, and that the only option available to Mr G would have been a refund of contributions. |
| 16 September 2016 | Mr G replied by email to say that he did not recall a refund and that "if there is an entitlement to either pension or contribution refund it would seem that it is incumbent upon the [the Scheme] to honour its obligations" |
| 27 September 2016 | Mr G emailed PSS asking it to acknowledge his email. |
| 5 October 2016 | Mr G emailed PSS asking it to acknowledge his email. |
| 24 October 2016 | PSS emailed Mr G, apologising for the delay in responding. It confirmed to Mr G that there was no evidence he held pension rights in the Scheme. |
| 19 November 2016 | Mr G wrote to PSS with his application for the Internal Dispute Resolution Procedure (IDRP). |
| 12 February 2017 | Mr G followed up on an enquiry to the Pensions Advisory Service (TPAS) asking for its assistance with his complaint. |
| 17 February 2017 | TPAS responded informing Mr G that there was no legal requirement for the Scheme to provide him with pension as he left the Scheme before 6 April 1975. TPAS confirmed that the only option would have been a refund of contributions. TPAS further said that there was no requirement for records to be kept after six years. |
| 13 March 2017 | PSS issue IDRP stage one determination letter. |

| | |
|--------------------------|--|
| 22 March 2017 | Mr G emailed PSS disagreeing with its stage one IDRPs decision |
| 8 April 2017 | PSS wrote to Mr G again, in response to the comments made in his email. PSS did not change its decision. |
| 15 May 2017 | Mr G applied to Merton to issue an IDRPs stage two decision. |
| 24 May 2017 | Mr G emailed Merton requesting an acknowledgement. Merton acknowledged this on the same day. |
| 14 July 2017 | Mr G wrote to Merton complaining that he sent emails on 5 June and 22 June and left a voicemail on 7 July, all of which went unanswered. Mr G gave Merton a deadline of 31 July 2017 to respond to his stage two IDRPs application. |
| 2 August 2017 | Merton contact Mr G, apologising for the delay and explain that it is investigating all the issues he raised. |
| 4 August 2017 | Mr G complained to Merton that his letter of 14 July 2017 was not acknowledged, and his emails of 5 and 22 June, along with his voicemail of 7 July were ignored. Mr G asks Merton to issue the stage two IDRPs decision letter by 31 August 2017. |
| 16 August 2017 | PSS wrote to HMRC requesting Mr G's contracted out national insurance earnings history for the period he was employed by Merton, between 1966 and 1974. |
| 12 September 2017 | Merton issued its stage two IDRPs decision letter. It did not uphold the complaint involving the refund of contributions, but it did offer £250 to Mr G to apologise for the delays in responding to his IDRPs requests. |
| 23 September 2017 | Mr G responded to Merton's stage two IDRPs letter. |
| 5 October 2017 | HMRC responded to PSS confirming that there was no liability under the Scheme to pay benefits to Mr G as a payment in lieu (PIL) had been made to the DHSS on Mr G's behalf. |
| 28 October 2017 | Mr G emailed Merton chasing the response from HMRC. |
| 8 November 2017 | Merton wrote to Mr G enclosing the letter from HMRC. |
| 19 November 2017 | Mr G chased a response to his email of 28 October 2017. |
| 22 November 2017 | Merton resent the HMRC to Mr G by email. |

| | |
|-------------------------|---|
| 30 November 2017 | Mr G wrote to Merton to accept the £250 payment award for distress and inconvenience and said he had decided not to pursue the complaint with this Office. |
| 16 February 2018 | Merton wrote to Mr G to ask for further bank details so it could pay the £250 however Mr G replied to say he had chosen to pursue the investigation at this Office. |