

Ombudsman's Determination

Applicant	Mr H
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Essex Pension Fund (EPF), Haringey Pension Fund (HPF)

Outcome

1. I do not uphold Mr H's complaint and no further action is required by either EPF or HPF.

Complaint summary

2. The Scheme is made up of a series of Funds which are administered by different administrators. Mr H has complained that he has been unable to "consolidate" his EPF and HPF benefits. He says that he will suffer a loss of pension benefits if he is unable to "consolidate" his two pensions.
3. Aggregation is the combining of some, or all of the pension funds held by an individual to create one larger fund. This may result in a greater retirement income. Regulation 32 of The Local Government Pension Scheme Regulations 1997 (**the 1997 Regulations**), provide an active member with the opportunity to aggregate earlier Scheme service with current Scheme service.
4. Mr H joined EPF in February 2002. He became a deferred member when he left his employer in April 2005. This meant that he stopped paying into the Scheme but was not yet receiving his pension.
5. On 18 April 2005, Mr H commenced work with a new employer and joined HPF. He remained an active member until 28 August 2005, when he left and became a deferred member.
6. Mr H says that during his time with HPF he asked that his EPF benefits be aggregated with his HPF benefits but received no response. Mr H also says that when he became a deferred member of HPF he made numerous requests by phone and email to combine the two pensions.
7. When Mr H reached age 60 in March 2017, he claimed payment of his deferred benefits with EPF.

8. In November 2017, Mr H received a letter from HPF which said:
 - changes were being made to the administration of HPF. This was because there was a merger of two college groups, and it was decided to move all members into one pension fund; and
 - the responsibility for the benefits held with HPF was being transferred to London Pensions Fund Authority (**LPFA**), administered by the Local Pensions Partnership (**LPP**).
9. This letter also had a section called “Will this affect the pension I receive” which confirmed:

“This change will not affect your current pension. Your Scheme benefits remain secure and subject to the same protections and Regulations that it is currently under. It is only the Scheme Fund responsible for paying your pension that is changing.”
10. On 17 January 2018, Mr H raised a complaint with both HPF and EPF. He said:
 - he was unhappy that the pension he had accrued in HPF was going to be transferred to LPFA; and
 - he wanted his pensions with HPF and EPF to be aggregated. He said he had made numerous requests for this to happen.
11. On 19 March 2018, EPF wrote to Mr H not upholding his complaint.
12. EPF said that:
 - Mr H left EPF in April 2005 and had been receiving payment of benefits from EPF since March 2017. It was no longer possible to transfer his EPF benefits to another provider; and
 - he would have had the opportunity to transfer in benefits from a previous provider when he joined HPF.
13. In March 2018, Mr H raised a formal complaint with both EPF and HPF under both Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**).
14. On 11 June 2018, EPF sent Mr H its IDR stage one decision not upholding his complaint. EPF said that:-
 - The 1997 Regulations restrict Mr H from being able to combine his pension accrued whilst a member of HPF with his deferred benefits in EPF. It referred to Regulation 32, regarding re-employed and re-joining deferred members which states:

“32.-(1) Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement

benefits in respect of his former membership, he may elect to have his former membership aggregated with his membership on or after the date he becomes an active member again.

...

(7) An election under paragraph (1) must be made by notice in writing to the member's appropriate administering authority in the employment in which he becomes an active member again whilst he is an active member in that employment.

(8) If the appropriate fund for membership in the new employment is different from that for any former employment as respects which the member is making the election, the notice under paragraph (7) must also be given to his appropriate administering authority in that former employment.”

- The 1997 Regulations provide an active member with the opportunity to aggregate earlier Scheme service with current Scheme service. In Mr H's case his service with HPF occurred after his service with EPF. For this reason, it was not permitted for him to link his membership in this way.
 - Mr H would have been provided with the option to aggregate his EPF service with his HPF service whilst he was an active member of HPF. There was no evidence that Mr H made any such requests.
 - Mr H's benefits are in payment and it would not be permitted for him to opt for any transfer in or out in respect of his pension entitlement.
15. Mr H felt EPF's stage one IDRPs decision was unfair and asked for his complaint to be reconsidered under stage two of the IDRPs.
16. On 12 October 2018, EPF provided its stage two IDRPs decision. It reiterated the points it put forward in its stage one IDRPs response and said it understood Mr H's argument was that if employers can change the administering authority then he should be able to do the same with his pension benefits. EPF said: "In the argument Mr H put forward about the administration of his pension from one authority to another, this is done in a way which has no impact on his pension entitlement. All that changes would be that his pension is administered by someone else and the value of his pension and the way it is calculated is not affected by the move."
17. On 2 July 2018, HPF provided its stage one IDRPs decision not upholding Mr H's complaint. HPF said that: -
- Aggregation of Mr H's HPF benefits with his EPF benefits was not permissible under the 1997 Regulations. It referred to part 32(8) of the 1997 Regulations and said that if a member has a deferred pension within the Scheme and then re-joins it, the member can make an "election" to aggregate the former membership with the new membership, but not the other way around.

- Any request to aggregate previous pension benefits must be made to the new administering authority whilst in employment. HPF said that it and EPF did not receive any request from Mr H regarding the aggregation of his benefits. As Mr H was now a deferred member of HPF and in receipt of his EPF benefits, aggregation of the two periods of membership was not permissible.
 - Any request to aggregate previous pension benefits with current membership must be made within 12 months of being in active membership unless the employer allows a longer period. HPF did not receive any requests for a transfer before the 12 month qualifying period ended. A transfer is now not permissible because it is out of time.
18. Mr H disagreed with HPF's stage one IDRPs decision and appealed under IDRPs stage two.
19. On 17 October 2018, HPF provided its stage two IDRPs decision, again not upholding Mr H's complaint. HPF reiterated the points put forward at IDRPs stage one and said that: -
- Under the 1997 Regulations it is not possible and would never have been possible for Mr H to aggregate his HPF benefits with his EPF benefits.
 - Also, under the 1997 Regulations it was also not possible to aggregate Mr H's EPF benefits with his HPF benefits. It referred again to part 23(8) of the 1997 Regulations saying that a transfer of benefits was only possible for a member who was not in receipt of benefits in respect of former membership. Mr H has been in receipt of his benefits since March 2017. Although, he claims that he asked on numerous occasions for his pension to be aggregated before he commenced payment in March 2017, neither EPF or HPF have any record of his instruction to transfer or aggregate his benefits.
20. On 19 November 2018, Mr H received a letter from EPF which explained that the administering authority was changing to the LPFA. The letter included the same information that was included in HPF's letter of November 2017. This meant that both EPF and HPF benefits would now be held with, and administered by, the LPFA as separate benefits.

Mr H's position

21. Mr H remained unhappy with the responses from EPF and HPF. He says that it is unfair that his benefits from EPF and HPF can both be transferred to LPFA, but he cannot aggregate them.

Adjudicator's Opinion

22. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by EPF or HPF. The Adjudicator's findings are summarised below: -

- Mr H claimed that he made multiple requests to aggregate his EPF benefits with his HPF benefits but received no response. This was while he was an active member of HPF, and also when he became a deferred member. HPF said that it received no requests from Mr H at any time and Mr H has been unable to provide any evidence to the contrary.
 - The Adjudicator considered Mr H's argument that it was unfair for his "pension benefits to be transferred from one authority to another" but they could not be aggregated. The Adjudicator said that although there was a change in the administering authority there were no changes made to the benefits Mr H would receive.
 - A change in the administering authority was different to the aggregation of two schemes which would affect his overall pension entitlement. In the Adjudicator's opinion, the letters sent to Mr H provided clear information that his pension would not be affected, and it was only the administering authority, responsible for payment of his pension, that was changing.
 - The Adjudicator pointed out that both EPF and HPF are bound to follow the statutory Regulations of the Scheme. This meant that the 1997 Regulations restricted Mr H from being able to aggregate his EPF and HPF benefits. Firstly, the 1997 Regulations only allow active members to aggregate earlier Scheme service with current service. Secondly, Mr H is out of time, as any request to aggregate previous pension benefits had to be made within the first 12 months of active membership. Finally, under the 1997 Regulations it is only possible to aggregate benefits when a member is not in receipt of benefits. Mr H has been in receipt of benefits from EPF since March 2017.
 - In the Adjudicator's view, HPF and EPF had correctly followed the 1997 Regulations.
23. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided further comments as summarised below: -
- Mr H says that he had previous benefits with LPFA which were aggregated with his EPF benefits when he joined. He says that this was a difficult process and took EPF some time to complete. Mr H says that because of his negative experience he immediately requested his benefits with EPF to be aggregated with his HPF benefits on joining HPF. He claims that HPF did not carry out his requests and initially told him that the transfer was not possible.
 - Mr H says HPF later informed him that the transfer was possible and the initial advice it gave him was wrong. Mr H says he is unable to provide any evidence of

his requests, or correspondence with HPF, due to it being such a long time ago but he says he is telling the truth.

- Mr H disagrees that the letter sent to him on 18 November 2018, made it clear that his benefits with EPF and HPF would be administered as two separate benefits under LPFA.
- Mr H accepts that he has been in receipt of his benefits with EPF since March 2017. However, he believes that this should not restrict him from being able to aggregate the two pensions. Mr H believes that LPFA should be made to aggregate his benefits with EPF and HPF.

24. These comments do not change the outcome and I agree with the Adjudicator's Opinion. I will therefore only respond to the points made by Mr H for completeness.

Ombudsman's decision

25. Mr H asserts that he made a request to aggregate his EPF benefits with his HPF benefits when he first joined HPF, and again when he left employment. He says that HPF initially said this could not be done, but then later accepted that the advice was wrong. Mr H has not been able to provide any evidence to support his claims and HPF has said it received no requests from him during this time. There is no evidence to support his assertion, so on a balance of probabilities, I find that Mr H did not make such a request.
26. Even had Mr H provided evidence from 2005, that part of his complaint would, in any event, fall outside of my jurisdiction. Regulation 5 of The Personal and Occupational Pension Schemes (Pension Ombudsman) Regulations 1996 (SI 1996 No. 2475), sets time limits on the matters I can consider. Mr H should have referred this matter to us within three years of the events that gave rise to it, or within three years of the date that he became aware, or ought to have been aware. Mr H ought reasonably to have known that his benefits with EPF and HPF had not been aggregated in 2005, when he was informed by HPF that the transfer was not possible. Particularly, given that he had previously been through an aggregation process when he transferred his benefits from LPFA to EPF. It is reasonable to assume that Mr H would have had an awareness of what the process entailed and that it had not been actioned in 2005.
27. Mr H said that the letter dated 18 November 2018, did not provide clear information that his benefits with EPF and HPF would be administered as separate benefits under the LPFA. Whilst I appreciate Mr H's confusion, I consider that the letters sent to him provided sufficient information to explain that it was the administration of his pension from one authority to another which was changing, nothing else. It is a very different proposition to the aggregation of pension benefits as it has no impact on how his pension would be calculated or change the amount of benefits he would receive. The letter sent to Mr H made it clear that his EPF pension would not be affected by the change. The letter explained: "It is only the Scheme Fund responsible for paying your

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pension that is changing." There is nothing in the letter to suggest that Mr H's EPF and HPF benefits would be administered as anything other than separate benefits.

28. I agree with the Adjudicator that the 1997 Regulations restrict Mr H from aggregating his EPF with his HPF benefits. I understand why Mr H would want to aggregate his pension benefits; however, the Scheme is bound by governing legislation which it is obligated to follow by law. I am satisfied that both HPF and EPF have acted in accordance with the 1997 Regulations.
29. I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
5 March 2020

Appendix

The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996

Time limit for making complaints and referring disputes

5.—(1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable.