

Ombudsman's Determination

| | |
|------------|---|
| Applicant | Mr S |
| Scheme | Local Government Pension Scheme (the Scheme) |
| Respondent | Staffordshire County Council (the Council) |

Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Council.

Complaint summary

2. Mr S has complained about the Council's annual request to complete a 'Life Certificate' form and sees no reason why an Ombudsman would condone, what he believes to be, an annual data breach. Mr S was also unhappy with the delays he experienced following his initial complaint to the Council in March 2018. He wants an award as a result of the delay.

Background information, including submissions from the parties

3. Mr S is in receipt of a pension from the Scheme and resides in Spain. The Council sent Mr S an annual Life Certificate form that required to be completed to ensure continued payment of his pension. This needed to be signed by a resident of Spain, who works in a particular field outlined by the Council. Mr S has completed this process every year since retirement.
4. In 2017, the Council, via a third-party administrator, trialled a new method for tracing pensioners abroad. However, due to negative feedback from some of its members, it reverted to the previous method of sending a Life Certificate form for completion.
5. On 16 January 2018, Mr S queried why the process had changed once again and said that he did not want to trouble residents of Spain to complete a personal and confidential form.
6. On 17 January 2018, the Council said that the annual Life Certificate form was required in accordance with pension regulations.
7. On 8 March 2018, Mr S complained to the Council regarding the annual Life Certificate process. The Council sent Mr S an acknowledgment email the same day.

8. On 12 March 2018, the Council told Mr S it could not accept the completed Life Certificate form that Mr S had provided that year, as both sections had been signed by Mr S. It needed the form signed correctly to ensure continued payment of pension.
9. On 21 March 2018, the Council provided Mr S with information on how to escalate his complaint via stage one of the Scheme's internal dispute resolution procedure (**IDRP**). It does not appear that Mr S responded to this.
10. On 28 March 2018, Mr S sent the Council an updated Life Certificate form. As Mr S had not received confirmation that the form was accepted, he chased a response on 18 and 20 April 2018. The Council responded on 20 April 2018 and said Mr S' pension would be paid as normal. The Council confirmed that it was still awaiting the completed stage one IDRP form and offered Mr S the opportunity to send his complaint via email if he could not complete the form.
11. On the same day, Mr S replied saying he deemed stage one and two of IDRP to be completed. The Council responded and said that the IDRP process could only be completed if it went through a formal process with a solicitor of the Council.
12. Mr S said the IDRP was complete as he wanted to continue with his complaint via the Pensions Ombudsman.
13. It appears as though the Council received no further correspondence from Mr S until he raised a formal complaint on 2 November 2018. Mr S complained that:-
 - The annual procedure was not required by legislation. There was an automated process within the UK which notified pension providers of a recipient's death within three months.
 - His "complaint revolves around the enforced breach of [Mr S'] sensitive personal data to a person or persons unknown under threat of cancellation of payments".
 - A taxpayer's death in an EU country should automatically be reported to the UK and if it is not, it should be.
14. Mr S' complaint was submitted under stage one of the IDRP. The Council had up to four months to respond and told Mr S it would respond by 9 March 2019.
15. On 19 February 2019, an independent adjudicator appointed by the Council responded and said that:-
 - The Pensions Regulator's regulatory code of practice number nine (Internal Controls) specified that there was an obligation on managers of occupational pension schemes to carry out regular reconciliation of membership records, including pensioner existence checks.
 - Regulation 15 of the Registered Pension Schemes (Authorised Payments) Regulations 2009, stated that unauthorised payment charges would apply for a

period of up to six months after a pensioner's death. The rate of the scheme sanction charge imposed on a scheme could be between 15% and 40%.

- The Council had a duty to ensure pensions paid were received by the pensioner. In order to fulfil this, it was reasonable for the Council to carry out existence checks. Failure to do so, could result in unauthorised payments which may result in unauthorised payment charges.
- It was not possible to trace pensioner deaths outside the UK.
- It did not consider the annual procedure to breach any data protection requirements. None of the data that was shared was deemed to be sensitive data, although it would amount to personal data under the Data Protection Act 2018.
- The process of issuing Life Certificates was common practice within the pensions industry. The Department for Work and Pensions (**DWP**) issued Life Certificate forms to check that pensioners were still eligible for the State Pension.
- It did not uphold the complaint and gave Mr S the option to appeal the decision under IDRP stage two.

16. Mr S appealed the decision on 22 February 2020. Mr S said that:-

- He initially raised his complaint in March 2018 not November 2018.
- There was an easy and automatic process in place that exchanged information between Spain and the UK. It was not common practice to use Life Certificate forms for the DWP.
- His data was deemed personal and sensitive under general data protection regulation (**GDPR**) legislation.
- The adjudicator appointed to investigate stage one of the IDRP was not independent from the Council, so should not have been appointed.

17. On 5 April 2019, an independent adjudicator appointed by the Council responded and said that:-

- The IDRP stage one was raised in November 2018, so the first stage decision was factually correct.
- The automatic exchange of information (**AEOI**) system required certain financial institutions to report pre-agreed information on specific accounts to the tax administration. This information would then be exchanged annually. The regulations surrounding this were complex and were intended to combat tax evasion. It said that the AEOI system was not guaranteed to trace all deaths.

- The UK government website and the foreign office guidance for Britons living in Spain advised that the UK Pension Service issued Life Certificates to non-resident UK pensioners to check eligibility for the State pension.
- Several other Local Government Pension Schemes (**LGPS**) issued Life Certificates annually to its members that reside overseas.
- “Under the GDPR, sensitive personal data is data consisting of racial or ethnic origin political opinions, religious or philosophical beliefs, or trade union membership: generic data, biometric data, data concerning health or data concerning a natural person’s sex life or sexual orientation. None of this information is requested on the life certificate form.”
- As a data controller, it was entitled to request personal data which was necessary in relation to the legitimate purpose for which it was collected. It was necessary in these circumstance for the Scheme to request personal data in order to ensure that pensions were paid correctly.
- In the Scheme’s guidance booklet for IDRP it said that, “neither the Pensions Act 1995 nor the LGPS regulations stipulate who should make a decision at the first stage of the dispute process. It could be, for example, the human resources manager, or the pensions or payroll manager. It will be for each scheme employer to decide who should be the adjudicator”. It is the Council’s practice to refer all disputes under the IDRP to a senior solicitor.
- It did not uphold the complaint.

Mr S’ position

18. He asked for an award to be made in light of the annual request to complete a Life Certificate form and the data breach involved in the process.
19. Following a query raised with DWP, DWP said that it did not send Life Certificates to UK State pensioners in Spain as data matching enabled information relating to customer deaths to be shared between the foreign authority and DWP.
20. He said that, the Council “[has] done everything correctly according to rules” when he reviewed previous emails regarding his complaint.

Adjudicator’s Opinion

21. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator’s findings are summarised below:-
 - The Adjudicator considered Mr S’ complaint regarding the annual Life Certificate procedure. For a complaint to be upheld, there must be maladministration. The Adjudicator used the regulations and legislation below to support his opinion:-

- The Pensions Regulator's code of practice number 9 (Internal Controls), which sets out the regulator's expectations of how occupational pension schemes should satisfy the legal requirements to have adequate internal controls in place. It said the ultimate responsibility to establish and operate internal controls rests with the trustees.
- Section 249A of the Pensions Act 2004 which gives effect to the requirement under Article 14(1) of the European Directive 2003/41/EC that schemes should have adequate internal control mechanisms in place.
- Under Regulation 15 of the Registered Pension Schemes (Authorised Payments) Regulations 2009, unauthorised payment charges would apply for a period of up to six months after a pensioner's death. The rate of the scheme sanction charge imposed on a scheme can be between 15% and 40%.
- The Adjudicator concluded that there was a duty on the Council to ensure pensions were paid to the pensioner entitled to the pension. Under Regulation 15 of the Registered Pension Schemes, if the Council failed to carry out existence checks, there was a risk it would make an unauthorised payment.
- Further, the procedure of issuing an annual Life Certificate form had been adopted by numerous other local councils. While the Adjudicator appreciated that DWP had changed its method from sending an annual Life Certificate form to using an online data system, the Council was within its rights not to adopt a similar method. The Adjudicator was of the view that the decision on whether to use the AEOI system was solely one for the Council to make.
- The Adjudicator acknowledged the concerns Mr S had regarding the use of his personal data, however further investigation into this aspect of the complaint fell outside the remit of the Pensions Ombudsman.
- In the Adjudicator's view, the Council had done nothing wrong, so he did not believe that the complaint should be upheld.

22. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. These are, in summary:-

- The 'independent adjudicator' used during the IDRP could not be independent as the solicitor was employed by the Council.
- The legislation provided by the Council regarding the annual Life Certificate process does not: dictate which method to use; confirm if the Life Certificate is an audit requirement; nor confirm if it must be an annual procedure. Further, Mr S questioned whether the legislation had been reviewed by a qualifying solicitor.

- Was the Council's claim that other local councils use an annual Life Certificate form checked? Even if the other councils use this method, it does not make it right.
- The Council ignored his first complaint and it took a year for it to be dealt with, so Mr S believed that this amounted to maladministration. As a result of the distress and inconvenience this caused, he believed an award was applicable.

23. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr S.

Ombudsman's decision

24. When investigating a complaint, it is my duty to determine whether there has been maladministration. If there is none, then the complaint will not be upheld. Mr S has argued that there is nothing specifying that the Council must issue Life Certificate forms. Equally, there is nothing to say that by doing so, it is acting in error. Having reviewed the Pensions Regulator's code of practice number 9 (Internal Controls) and Section 249 A of the Pensions Act 2004, I agree that these do not specify which method the Council should use, nor confirm that it is an audit requirement, or that it needs to be performed annually. So, it is for the Council to decide how it satisfies the requirement of having adequate internal controls in place.
25. While I appreciate Mr S would prefer an alternative method, issuing an annual Life Certificate it does not amount to maladministration. So, I do not find that the Council has done anything wrong. I have noted that DWP use an automatic exchange system but that does not mean that the Council must adopt a similar system, or that it has done anything wrong by choosing not to do so. Without a regulatory requirement to adopt an automatic exchange system, I cannot see that there has been an error.
26. I note Mr S' has concerns about the use of his personal data and how he believes this to be in breach of GDPR. This falls outside of my remit, so even if I was presented with information affirming a breach, I would not be the appropriate body to address this issue.
27. With regard to Mr S' comments about other local councils, it is evident from a check on other local council websites, that the Council is not the only one to adopt the process of issuing annual life certificates. This demonstrates that this method is not uncommon. I appreciate Mr S' point that even though other councils are using the same method, it does not mean that said method is correct. However, for the reasons explained in paragraph 24 above, I do not consider that the Council's choice to issue the annual Life Certificate forms is incorrect.
28. It is evident that Mr S raised his initial complaint in March 2018; this has not been disputed by the Council. Mr S has said the Council ignored this complaint. I disagree. Mr S was provided with information on how to raise his complaint through the Scheme's IDRPs following his initial complaint. On 20 April 2018, Mr S informed the

Council that he deemed the IDRП to be completed. After the Council confirmed to Mr S that the IDRП could not be completed without following the correct procedure, it received no further correspondence regarding the complaint until November 2018. Mr S has not provided any evidence to suggest otherwise. So, I find the Council did not cause any delay in handling the initial complaint in March 2018.

29. In accordance with the Scheme's regulations, the Council does not need to employ the services of an external party to conduct an investigation through IDRП. I find there were no delays in the Council's response to stage one and two of the IDRП.
30. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
01 June 2020