

Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Nottinghamshire County Council (the Council)

Outcome

1. Mrs N's complaint against the Council is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) the Council shall pay Mrs N £500 in recognition of the significant distress and inconvenience caused.

Complaint summary

2. Mrs N complains that her pensionable hours in respect of her employment with the Council have been incorrectly recorded and as a result she will not receive the pension she is entitled to under the Scheme. Mrs N would like her pensionable hours to be corrected and her benefits to be recalculated. She would also like the Council to provide all the information it has relied upon and compensation for the distress and inconvenience caused.

Background information, including submissions from the parties

3. Regulation D1 of the LGPS Regulations 1995, defines pensionable remuneration as,
"A person's pensionable remuneration, in relation to a local government employment, was their remuneration for so much of the relevant period as they were entitled to count as a period of membership in relation to that employment."
4. Regulation C2 of the LGPS Regulations 1995, states that remuneration does not include payments for non-contractual overtime.
5. Regulation 13(1) and (2) of the LGPS regulations 1997, states that:

13 (1) An employee's pay is the total of

- a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment;
- b) the money value of any benefits provided for him by reason of his employment; and
- c) any other payment or benefit specified in his contract of employment as being a pensionable emolument.

(2) But an employee's pay does not include-

- a) payments for non-contractual overtime

6. Mrs N disputes the amount of pensionable hours recorded for her service between 30 September 1991 and 31 August 1997.
7. In December 2013, Mrs N contacted the Council to query the discrepancies in her Pensionable Service records. In December 2014, Mrs N received a written response from the Council. The Council made some amendments to its records and provided Mrs N with the following breakdown of its findings.

Period		Pension record currently	Hours claimed by Mrs N	The Council's findings
30/09/1991	24/03/1993	15	16	Change not justified. Starters form states 15 hours from 30/09/91
25/03/1993	20/03/1994	10.1	20	Change not justified. Manual calculation of hours on payroll performed by pensions staff
21/03/1994	28/08/1994	17.37	20	Change to 22.2 hours- error in application of hours to relevant period
29/08/1994	19/03/1995	22.2	24	Change not justified. Manual calculation of hours on payroll performed by pensions staff
20/03/1995	24/03/1996	20.25	24	Change not justified. Manual calculation of hours on payroll performed by pensions staff
25/03/1996	23/03/1997	20.39	24	Change not justified. Manual calculation of hours on payroll performed by pensions staff
24/03/1997	31/08/1997	0.7	24	Change to 22.2 hours - error in application of hours to relevant period

8. Mrs N disagreed with the recorded pensionable hours and in support of her position she provided a testimony from her previous manager. As Mrs N was unable to resolve her complaint, her representative on her behalf, invoked the Scheme's internal dispute resolution procedure (**IDRP**).
9. In its IDRP stage one response in December 2015, the Council said that:-
 - Pensionable service for casual or relief employment prior to changes in April 2014, "was calculated using the average hours worked for the last three years."
 - There was no written contractual evidence available for 22 April 1991 to 31 August 1997.
 - The Council's pensions team had tried to reconcile her recollection of her hours worked against payroll data. However, in absence of written evidence it could not override the payroll system based figures.
 - Personal testimony could not be considered as legitimate evidence of pensionable hours worked.
 - National Insurance (**NI**) records were not a substitute for the need of contractual evidence.
 - Based on the evidence available Mrs N's employment history was reasonable.
 - The Council provided a copy of a letter, sent to the Benefits Agency on 24 March 1993, that confirmed Mrs N's contracted hours were 15 hours per week.
 - The Council decided that based on the evidence available its records of Mrs N's pensionable service were, "reasonable and cannot legitimately be further amended."
10. In March 2016, Mrs N appealed the decision and provided the Council with further information. This included a copy of her NI records, statutory notifications showing her membership from November 2003 and February 2005, and a summary of her membership from 25 March 1993 to 3 October 2010.
11. In the Council's IDRP stage two response in October 2016, it said:-
 - Mrs N's pensionable hours were only her contractual hours and did not include any overtime she may have worked.
 - When her employment commenced on 30 September 1991, she signed an option form to join the Scheme and the form confirmed that her contractual hours were 15 hours per week. On 24 March 1993, a letter was sent to the

Benefit Agency to confirm she worked 15 hours a week. Therefore, for this period 15 hours a week is correct.

- Mrs N claimed that from 25 March 1993 to 28 August 1994, she worked 20 hours per week. However, there was no evidence of a change in contract or a change in employment to support this. Furthermore, it would be unlikely that there would be a change in her contractual hours the day after a letter was sent to the Benefit Agency to confirm them.
- It had identified there were two changes needed to correct its records in respect of the period from 21 March 1994 to 28 August 1994, and from 24 March 1997 to 31 August 1997. It identified the errors had been caused “in the application of the hours to the relevant period.”
- The payroll records corresponded with the calculations performed by its pensions department.
- Limited weight had been applied to the testimony provided by her former manager as her manager was unable to verify the information provided. In any event, confirmation of the hours worked would not clarify whether the hours were contractual or not.
- It demonstrated that Mrs N's NI records supported its findings.

12. Unhappy with the IDRP stage two response, in July 2017, Mrs N brought her complaint to this Office.

13. The Council provided this Office with the records it had relied upon when calculating Mrs N's pensionable hours. The information includes copies of the Council's payroll records and the option form Mrs N completed when she joined the Scheme. These were shared with Mrs N who made the following comments:-

- The information provided is only a methodology of the calculations the Council had made.
- There was no correlation between the figures the Council had provided and her NI records.
- Throughout the procedure the Council disputed that she had a second contract, but the calculations provided showed that she had a second contract from 1994 to 1998.
- The errors that had been made showed the Council's lack of thorough and dedicated record keeping.
- The Council had stated that her minimum starting hours were 15 hours a week so how could the hours 10.1 and 0.7 have been recorded.

- The only factual records available are the NI records and the fair way to calculate Mrs N's pension would be to use them.
- Mrs N has missed out on her pension for 5 years and suffered distress and inconvenience over this time.

Adjudicator's Opinion

14. Mrs N's complaint was considered by one of our Adjudicators who concluded that part of the complaint should be upheld. The Adjudicator's findings are summarised below:-

- The Council had provided payroll records that were prepared in December 1997 and checked in January 1998. The payroll records provide a summary of the hours worked by Mrs N from September 1991 to August 1997. The records also confirmed Mrs N had a second contract of employment with the Council from August 1994 to August 1997.
- There was no information to contradict the Council's records or anything to suggest the records were unreliable.
- The Council had demonstrated in its IDRP stage two response that it had taken into consideration Mrs N's payroll records alongside her NI records and that the NI records supported its findings.
- The Council had provided Mrs N with incorrect information about her pensionable hours and had taken a year to respond to her initial query. This amounted to maladministration and therefore the Council should pay Mrs N £500 in recognition of the significant distress and inconvenience caused.

15. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness.

16. Mrs N said in her response that:-

- She remained unhappy with the way the Council had administered and recorded her hours, The Pensions Ombudsman's interpretation of the information and the award for distress and inconvenience.
- The award of £500 was not enough and it should be increased. The award did not reflect the fact that she had been waiting five years to take her pension and the financial and mental problems caused by the complaint.
- There is no conclusive evidence to support the outcome reached. She did not agree that the payroll data was accurate or complete and thought that far too much emphasis had been placed on this by the Adjudicator. The Council had

previously stated that there were no available records and the records it did hold were incomplete. The Adjudicator's decision to accept the records as an accurate account of the hours worked and her pension entitlement is flawed.

- The Council had let her down as it should have done more to ensure she received the correct amount of pensionable service. It was the responsibility of the employer to keep clear employment records.
- The Council had not thoroughly investigated the testimony and evidence that she had provided. It had failed to contact a current employee in order to verify the hours Mrs N had said she had worked.
- The Council have incorrectly identified that the pension contribution rate was 2% but the correct contribution rate was 5%.
- The NI records could be scrutinised to determine the figures used to calculate her pension.
- The Council should be able to produce pension contribution records and annual statements.

Mrs N also provided a copy of her 2019 pension statement which showed her annual pension was £608.47.

17. The Council provided further analysis of Mrs N's NI records. It said that:

- It had implemented new payroll software in 2010 that only holds data back to 1997.
- The records from 1997 to 1998 showed that Mrs N had two positions and worked overtime. Her total pensionable earnings were £2,243.99 but her NI earnings were £2,502.29.
- The differences in Mrs N's pensionable pay and NI earnings were a result of the overtime that she worked which was non-pensionable.

Ombudsman's decision

18. Mrs N does not agree that the payroll records provided by the Council can be relied upon to evidence the hours she worked. The payroll records of the disputed time confirm that Mrs N had two employment contracts with the Council. The first contract was from 30 September 1991 to 31 August 1997. The second contract started on 29 August 1994 and ended on 31 August 1997. The payroll records confirm the hours Mrs N worked and the pension contribution rate of 5%. Having reviewed the records, and in the absence of any other evidence proving otherwise, I find that they can be relied upon.

19. Mrs N states she has been waiting for five years to resolve her complaint with the Council and receive her pension. She feels that the £500 award recommended by the

Adjudicator is not sufficient. The Council took a year to reply to Mrs N's initial query and its records contained two errors. I have considered the Council's actions following the initial one year delay and have noted that it did respond promptly at both stages of the Scheme's IDRP. There is no doubt that there were initial delays and two errors found in her recorded hours which amounts to maladministration on the part of the Council.

20. Mrs N has also stated that her NI records should be scrutinised in order to accurately calculate her pension. The Council has reconsidered Mrs N's NI records and explained that her pensionable pay and NI earnings differ due to the overtime Mrs N worked. The Council no longer has records of Mrs N's overtime therefore the NI records cannot be relied upon to calculate her pension. While Mrs N might be disappointed by this, I do not consider it unreasonable given the considerable amount of time that has passed.
21. However, in respect of the significant distress and inconvenience caused by the Council's initial delays and the two errors contained in her recorded hours, I partly uphold Mrs N's complaint.

Directions

22. Within 14 days of the date of this Determination, the Council shall pay £500 to Mrs N with regard to the significant distress and inconvenience which she has been caused.

Anthony Arter

Pensions Ombudsman
18 November 2019