

Ombudsman's Determination

Applicant	Miss T
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Nottinghamshire County Council (the Council)

Outcome

1. I do not uphold Miss T's complaint and no further action is required by the Council.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss T's complaint against the Council concerns its decision not to change the retirement option she selected on 30 March 2017, in respect of her "flexible retirement" pension benefit not to convert any pension to additional lump sum. Miss T believes that the Council's decision is unreasonable and unfair as it solely relied on the paperwork she sent back, which she says, she mistakenly chose the incorrect option.

Background information, including submissions from the parties

4. On 30 March 2017, in an "Application to Receive Retirement Benefits" Miss T ticked the box under "I am not interested in converting any of my annual pension into additional tax free lump sum".
5. On 7 April 2017, the Council sent Miss T a letter thanking her for completing the Pension Application Form.
6. In April 2017, Miss T wrote a letter to the Council saying:

"I filled in the form for my pension, I opted for the full amount which was £18,235.30. Upon checking my account, I notice I was paid £5,169.94. After ringing your office, I was told I tick [sic] the wrong box [sic] if I wanted my full pension. So, I'm asking you please if you could make this an exception for me please. I think I didn't understand the question and I did ask a colleague who already did his and he said that was the right box to tick..."

7. On 24 April 2017, the Council sent Miss T a letter rejecting her request.
8. In August 2017, Miss T appealed against the Council's decision by invoking the Scheme's two-stage internal dispute resolution procedure (**IDRP**).
9. On 22 September 2017, the Council sent Miss T a response under stage one of the IDRP that upheld its previous decision and added:

"I have reviewed the pension estimate letter dated 26 January 2017 provided to you by Nottingham City Council Pensions Office (copy attached). This letter sets out clearly the annual pension and total lump sum retiring allowance based on your current pay and conditions as well as the details "if you were to opt for the maximum conversion." This letter clearly state [sic] that "You don't have to decide immediately if you wish to convert any of your pension. You will receive a pension application form to complete shortly before your retirement date. Section 2 of this form is used to specify what conversion, if any, you wish to take. This letter also provided you with details of the Retirement Guide which could be downloaded from the Nottinghamshire Pension Fund website or obtained by requesting a copy via the Nottinghamshire Pension Fund helpline."

10. Miss T further appealed by invoking stage two of the IDRP. On 14 February 2018, the Council sent her a response under stage two that upheld its previous decision. It also referred to LGPS Regulations 2013 that cover the conversion of pension to lump sum and state:

"33.-(1) Subject to paragraph (4), a member entitled to a retirement pension under the Scheme may by written notice given to the appropriate administering authority before any benefits in relation to the benefit crystallisation event become payable, commute the retirement pension payable, or part thereof, at a rate of £12 for every £1 of annual pension commuted."

11. In May 2018, Miss T brought her complaint to this Office.

Adjudicator's Opinion

12. Miss T'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 briefly below: -
 - Miss T said that she has made an error when completing the form, however the Adjudicator has seen no evidence to prove this. Miss T ticked the box under "I am not interested in converting any of my annual pension into additional tax free lump sum." So, on the balance of probabilities, she was aware of the choice she made.

- In its stage 2 response, dated 14 February 2018, the Council said that under the LGPS Regulations 2013 “a member entitled to a retirement pension under the Scheme may by written notice given to the appropriate administering authority...commute the retirement pension...” So, by sending a completed application form Miss T agreed to the option not to convert any pension to additional lump sum. The Adjudicator did not believe that the Council made an administrative error, or that its actions in not agreeing to reverse her request were unreasonable.
 - Miss T was provided with relevant information in the letter dated 26 January 2017 within the Retirement Guide which could be downloaded from the Pension Fund’s website or helpline. The Adjudicator would have expected Miss T to read her options carefully before she made such an important decision in relation to drawing her pension benefits. Therefore, the Adjudicator did not believe the Council did anything wrong by following Miss T’s instructions in the form.
13. Miss T did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Miss T did not provide any further comments but maintained her stance that she made a clerical error when filling out the form. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Miss T for completeness.

Ombudsman’s decision

14. I find that It is clear from the pension application form that if Miss T wanted to discuss her pension options, she should contact the Retirement Helpline. Yet I have seen no evidence of Miss T contacting the helpline to discuss her options.
15. Miss T said that she discussed which option to choose with her colleague when making a decision. It is Miss T’s responsibility to ensure she has chosen the option that best suits her and her circumstances. If she was unclear which option to select she could have sought financial advice as recommended in the pension application form or contacted the Retirement Helpline for guidance on completing the form. I expect members to take extra care when making such important decisions about their retirement. The Council cannot be held responsible for her, or her colleagues’ mistake.
16. I find that the Council did not do anything wrong by acting on her written instructions. The Council was not party to Miss T’s personal circumstances and acted in line with the instruction it gave her. It is not the Council’s place to make assumptions over how she wishes to take her benefits. As the Regulations specify that written instruction to commute pension for an additional lump sum must be received prior to the benefits being crystallised, there is no provision under the Regulations to allow the Council to reverse Miss T’s position and let her choose a different option.

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17. Therefore, I do not uphold Miss T's complaint.

Karen Johnston

Deputy Pensions Ombudsman
20 November 2018