

Ombudsman's Determination

Applicant	Mrs G
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	West Yorkshire Pension Fund (WYPF)

Outcome

1. I do not uphold Mr G's complaint and no further action is required by WYPF.

Complaint summary

2. Mrs G has complained about the calculation of her deferred benefits. Mrs G said that WYPF did not inform her that the amounts that she could have received, had she taken her pension at Normal Retirement Date (**NRD**), would not be accumulated and paid at a later date.
3. Mrs G has said that, had she known that her benefits were not accumulating, she would have put her pension into payment. She argues that she has suffered financial loss equalling the amount of the benefits she could have received had she claimed her benefits from her NRD.

Background information, including submissions from the parties

4. On 31 October 1999, Mrs G left her pensionable employment. As a result, Mrs G's benefits were administered in accordance with the Local Government Pension Scheme Regulations 1997 (**the Regulations**).
5. On 7 May 2010, WYPF wrote to Mrs G to explain what options were available to her from her NRD. It also included an option form (**the Option Form**), which gave Mrs G the option to receive her benefits from NRD or to defer benefits until any date prior to her 75th birthday. The letter did not supply any information regarding what would happen to her deferred benefits, it said that if Mrs G had any questions, she should contact WYPF.
6. Shortly after, Mrs G completed the Option Form and elected to defer her benefits until 19 July 2020.

7. On 21 June 2010, WYPF wrote to Mrs G and confirmed receipt of her request to defer until 19 July 2020. WYPF confirmed that it would write to Mrs G shortly before 19 July 2020, to provide her with an updated benefits statement.
8. On 11 May 2018, Mrs G requested a benefits quotation, using a payment date of 1 June 2018.
9. On 20 June 2018, Mrs G contacted WYPF and said that she believed that her deferred benefits would have been accumulating for the years not claimed. WYPF responded, saying that deferred benefits were not accumulated this way.
10. On 22 June 2018, WYPF received claim forms confirming that Mrs G wanted her remaining benefits to be paid from 1 June 2018.
11. On 29 June 2018, Mrs G complained to WYPF. She said that she decided to defer her benefits in the expectation of receiving a payment of the accrued balance of all benefits she would have received had she claimed her benefits from NRD. Mrs G has complained that WYPF should have made it clear that benefits were not paid in this way, so her benefits should be backdated to NRD.
12. On 31 August 2018, WYPF responded to Mrs N's complaint. It said that it had to administer the Scheme in line with the Regulations. Rule 20(4A) of the Regulations (see Appendix), said:-

“Where no benefit crystallisation event has occurred before the day after a member's 65th birthday in respect of any benefits payable under the Scheme, those benefits shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary.”
13. It concluded that it had correctly calculated Mrs G's benefits, so it could not uphold the complaint.
14. On 5 September 2018, Mrs G appealed against the decision. She said that she had been told that if she had taken her pension prior to her NRD she would have incurred a reduction in her benefits. With this in mind, Mrs G assumed that if she deferred taking her benefits beyond NRD, they would accrue. She said that she was only ever told about what would happen to her benefits in the run up to her NRD. She said that she had not been told what would happen to her benefits if she deferred them beyond NRD. Mrs G has complained that she only found out that her understanding was incorrect on 18 June 2018.
15. On 26 September 2018, the City of Bradford Metropolitan District Council (**Bradford Council**) issued its response to the complaint. It said that WYPF had applied the appropriate legislation. It said:-

“That legislation does not allow for you to be awarded the equivalent of all the payments foregone since your 65th birthday in the manner that you claim you should receive them, nor is there any evidence that WYPF led you to believe that this would be the case.”

16. Bradford Council confirmed that WYPF followed Government Actuary guidance that provided for an uplift of 0.01% pension increase for every day beyond Mrs G's NRD. It concluded that WYPF followed the appropriate Regulations.
17. On 1 October 2018, Mrs G brought her complaint to the Pension Ombudsman's Office (**my Office**). She said that she was not told that she would forfeit all the payments she could have received from her NRD. Therefore, she thinks that all payments should be made retrospectively.
18. On 18 January 2019, WYPF wrote to my Office. It explained that it was not aware of all of Mrs G's circumstances on her NRD and it was not authorised to offer advice. It said that it would not have directed Mrs G to receive her benefits from a specific date, its only obligation was to ensure that she claimed her benefits by her 75th birthday. It said that Mrs G was compensated for receiving payment of her benefits after NRD, by virtue of Regulation 20(4). This meant that her benefits were increased in accordance with the relevant Government guidance, which resulted in her pension being paid at nearly 29% higher than it would have been had she taken it at 65.

Adjudicator's Opinion

19. Mrs G's complaint was considered by one of our Adjudicators who concluded that no further action was required by WYPF. The Adjudicator's findings are summarised below:-
 - WYPF must apply the Regulations. Regulation 20(4A) clearly confirms that deferred benefits, beyond NRD, should be increased as appropriate in accordance with guidance issued by the Government Actuary. The Government Actuary advised that Mrs G's pension benefits should be increased for every day beyond her NRD at the rate of 0.01%. As a result, the pension Mrs G is receiving benefits nearly 29% higher than had she taken them at NRD.
 - Mrs G has argued that WYPF provided incorrect information about what would happen to her benefits had she deferred them beyond her NRD. She said that the only information she was given was when she was told, prior to her 60th birthday, that if she took benefits before her NRD they would be reduced. Mrs G has said that she assumed that if she were to defer her benefits beyond age 65, the benefits she would have received, had she taken her benefits, would be pooled and increased. Mrs G has not been able to provide anything to show that WYPF encouraged her assumption, so the Adjudicator did not think there had been any maladministration.
 - In addition, Mrs G has argued that WYPF did not supply her with enough information to allow her to make an informed decision. On 7 May 2010, WYPF wrote to Mrs G and said that she could either put her benefits into payment or defer her benefits for a later date. The letter did not supply any further information on how benefits would be treated if she were to defer them. Without requesting

confirmation of how deferment would affect her benefits, Mrs G asked for her benefits to be deferred.

- As WYPF was not authorised to give advice, it would have been up to Mrs G to consider whether it was beneficial to defer her benefits. The Adjudicator was not satisfied with Mrs G's argument that she had been given insufficient information. WYPF supplied contact details for any queries and encouraged Mrs G to contact it if she had any questions. There is no evidence that Mrs G contacted WYPF. The Adjudicator said that Mrs G should have requested more information before deciding to defer.

20. Mrs G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs G provided her further comments which do not change the outcome. Mrs G said that:

- WYPF would have been fully aware that by allowing her to defer her pension beyond NRD, she would experience financial loss.
- She was not provided with sufficient information to allow for an informed decision.
- Following receipt of the Option Form, on 17 May 2010, she made a telephone call to WYPF and asked for "details" on what would happen if she was to defer (**the Telephone Call**). She has said that the WYPF representative (**the Representative**) told her that if she wanted her benefits to be deferred, she would have to complete and return the Option Form. She said that the WYPF should have told her what effect this would have had on her benefits.
- When members now approach NRD, WYPF now provides a warning that members may suffer financial loss if they defer their benefits beyond NRD. It now warns, "...because the increase to your pension is such a small percentage you will probably receive more pension overall if you claim your pension from your NRD." She said that she has mentioned this to The Pensions Regulator (**TPR**), who considered this important. Mrs G says that this shows that there has been maladministration.
- A simple resolution could be achieved by WYPF rescinding her application to defer the pension and backdate her benefits to her NRD.

21. Mrs G has provided conflicting information regarding the Telephone Call. Throughout the Adjudicator's investigation, there was no mention of such a call. Furthermore, following the Adjudicator's Opinion, Mrs G told the Adjudicator that she had not contacted WYPF prior to completing her Option Form. This information has been recorded within the Adjudicator's call notes.

22. However, when Mrs G provided her written response to the Opinion, she said that the Telephone Call took place. She said that she told the Representative that she was considering taking the option to defer and asked for more details. The Representative asked whether she was already a deferred member, which she said she was, and

then instructed her to complete the Option Form. She has argued that this was the point that WYPF should have made it clear to her how benefits were increased in deferment.

23. When the Adjudicator asked why she had not mentioned the Telephone Call prior to the Opinion being issued, Mrs G said that she did not consider it was relevant to the complaint.
24. WYPF has confirmed that it does not hold a record of any telephone conversation taking place on 17 May 2010.
25. I note the additional points raised by Mrs G but I agree with the Adjudicator's Opinion.

Ombudsman's decision

26. Mrs G has argued that WYPF would have been aware that, by allowing her to defer her pension beyond NRD, she would experience a financial loss. I do not agree with her argument, WYPF is not regulated to provide financial advice to members, so it could not have been expected to consider individual's circumstances.
27. She has also argued that WYPF did not supply sufficient information to allow her to make an informed decision. On 7 May 2010, WYPF wrote to Mrs G and said that she could either put her benefits into payment or defer her benefits for a later date. There was no explanation as to what would happen to benefits if they were deferred, but the letter invited members to contact WYPF if they had any questions.
28. When the complaint was originally submitted to my office, Mrs G said that she did not request further information from WYPF. She confirmed this when she spoke to the Adjudicator during the original investigation into her complaint. She said that she assumed that if she deferred taking her benefits beyond NRD, they would accrue and be paid as one payment. I have seen no evidence to suggest that WYPF encouraged this assumption, so I do not agree that there has been maladministration.
29. Since the Adjudicator issued the Opinion, Mrs G has said that she did request further information from WYPF. She said that she did this during the Telephone Call, which she said took place on 17 May 2010. WYPF has said that it does not hold any record of this call. Having reviewed Mrs G's testimony, there is a question as to whether the Telephone Call took place. However, I am going to proceed on the understanding that it did, and Mrs G's description of the contents was accurate. Mrs G has said that she asked the Representative to provide "details" regarding deferment, and the Representative said that, in order for her to defer beyond NRD, she had to complete the Option Form. She said that this was an opportunity for WYPF to explain to her that deferring her benefits could cause financial loss.
30. As explained in paragraph 24 above, WYPF is not regulated to provide financial advice to its members, so it should not have been expected to have considered Mrs G's personal circumstances and have given her any advice on whether to defer her benefits. Mrs G has conceded that the Telephone Call was a brief conversation

where she asked for “more details”. If Mrs G was unsure as to the effect of deferring her benefits, it was her responsibility to have requested more information in order to make an informed decision. I would also have expected her to ask for that information in writing so she, or an Independent Financial Advisor, could have established what was in her best interests. Her failure to consider the effect of deferring her benefits cannot be attributed to any maladministration on the part of WYPF.

31. Mrs G has said that WYPF now provides a warning that members may suffer a financial loss if they defer their benefits beyond NRD. The letter that accompanies the Option Form now says, “...because the increase to your pension is such a small percentage you will probably receive more pension overall if you claim your pension from your NRD.” Mrs G has argued that this shows that the information she was given was insufficient.
32. The additional information included on the Option Form is not evidence of maladministration. I appreciate that Mrs G feels that if the disclaimer had been included within her Option Form, she may have chosen not to defer her benefits. However, the Option Form, and the letter that accompanied it, did not purport to be detailed documents, so I do not agree that WYPF was required to explain what would happen if Mrs G was to defer her benefits. Furthermore, the letter provided contact details and invited Mrs G to contact WYPF if she had any further enquiries. If Mrs G had any doubt as to the manner in which her benefits would be paid, she should have contacted WYPF for clarification of how benefits increase in deferment. Although she has said that she contacted WYPF, there is no indication that she sought to clarify how deferred benefits accrue.
33. Mrs G has said that this complaint could be resolved if WYPF backdated her benefits to her NRD. I will only make such a direction if I am satisfied that the respondent’s actions amount to maladministration. In this case, I do not find that there was any maladministration.
34. I do not uphold Mrs G’s complaint.

Anthony Arter

Pensions Ombudsman
31 August 2021

Appendix

The Local Government Pension Scheme Regulations 1997

20(4A) Where no benefit crystallisation event has occurred before the day after a member's 65th birthday in respect of any benefits payable under the Scheme, those benefits shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary. (SI2006/966)