

Ombudsman's Determination

Applicant	Mrs M
Scheme	Local Government Pension Scheme, Cambridgeshire Pension Fund (the Scheme)
Respondent	Cambridgeshire County Council (CCC)

Outcome

1. Mrs M's complaint against CCC is partly upheld and, to put matters right, CCC shall reconsider whether to extend the time limit in which Mrs M may apply for employer shared cost contributions, in accordance with Regulation 16 (16) of the Local Government Pension Scheme Regulations 2013 (**the LGPS Regulations**).
2. In addition, CCC shall pay £500 to Mrs M, in recognition of the significant distress and inconvenience it has caused.

Complaint summary

3. Mrs M's complaint is that CCC refused to allow her to apply for shared cost additional pension contributions (**SCC**), outside the time limit in its policy on absences dated September 2015 (**the Leave Policy**), and did not properly consider that it could extend the time limit under Regulation 16 (16) of the LGPS Regulations.

Background information, including submissions from the parties

4. Mrs M is employed by CCC within the social services department and is a member of the Scheme. In 2015, she applied for a fourteen months' sabbatical from CCC so that she could undertake "start-up" social worker training. Her sabbatical was approved by the Head of Service and her Service (Group) Manager (**JB**).
5. Mrs M claims that JB discussed the terms of her sabbatical with the human resources team (**HR**) and then told her that she would not be paid during her sabbatical and everything else would be "on hold" until she returned to work. CCC says there are no written records of this meeting.
6. On 17 December 2015, her last working day, Mrs M received a letter from JB confirming that her sabbatical would start on 4 January 2016 and end on 28 February

2017. Mrs M received no further information about the terms of her sabbatical, though she claims she requested confirmation of them in writing.

7. On 1 March 2017, Mrs M returned to work with CCC. She had successfully completed her training course. She met with JB to discuss her future role and, shortly afterwards, she was appointed as a qualified social worker. CCC says there are also no written records of this meeting.
8. On 24 March 2017, Mrs M received her first payslip after returning to work. She noticed that the usual pension deductions had not been made and she says she queried this with her Line Manager. CCC says there is no record of this conversation. Mrs M and her Line Manager disagreed subsequently about whether they had discussed pension contributions relating to the period of her sabbatical or to the period after her return to work.
9. In April 2017, Mrs M agreed to repay a full month's salary, paid to her in error in February 2017. She claims she was not previously aware of this overpayment because she had not received a payslip in February 2017. She also says she did not receive a payslip in April 2017.
10. In May 2017, Mrs M received another payslip and noticed that pension contributions were not being deducted from her salary. She says she then realised that there might be an issue with her pension. She claims that her Line Manager advised her to contact the payroll team (**Payroll**) to discuss this.
11. On 24 May 2017, Mrs M contacted Payroll through the internal email system and asked why she was not paying pension contributions.
12. On 25 May 2017, Payroll informed Mrs M that she had a "gap in service" over the fourteen months of her sabbatical. Payroll advised her that she could pay additional pension contributions (**APC**) to reinstate her membership in the Scheme and CCC would pay two thirds of the costs, as SCC. Payroll advised her to submit an absence form and explained that her pension contributions would be deducted, as normal, from June 2017, and that she could pay May's contributions by deduction from her June salary.
13. On 31 May 2017, Mrs M asked Payroll for more information about the options available to her to prevent a gap in service. Mrs M claims that Payroll informed her that her manager should have explained this to her before she left on sabbatical, and again, when she returned to work. However, CCC later disputed this and said that Payroll had given her incorrect information.
14. On 12 June 2017, Payroll advised Mrs M that it was still waiting for additional information from the Scheme. Mrs M claims she then discussed paying APC with her Line Manager. Her Line Manager later said that this was the first time that Mrs M had raised the issue about paying pension contributions for her unpaid leave.

15. On 15 June 2017, Mrs M says that she sent an email to her Line Manager, specifically asking CCC to authorise the payment of SCC. She claims that her Line Manager then contacted the Service (Group) Manager (**MC**), JB's replacement. Mrs M says nothing then happened for several weeks, even though she asked for an update many times.
16. On 31 July 2017, Mrs M says that MC informed her that CCC would not pay any SCC, as she had not applied within the time limit in the Leave Policy, limit which was within 30 days of returning to work. The Leave Policy states:
 - Employer contributions will not be paid during unpaid leave.
 - Employees may elect to pay additional contributions to purchase the lost pension.
 - The election must be made within 30 days of returning to work.
 - The employer will pay two thirds of the cost.
 - If the election is made outside the 30 days' period, the employee must pay all the costs.
 - Employees should contact the Pensions Service to arrange this.
17. On 3 August 2017, following advice from UNISON, Mrs M asked CCC to reconsider its decision. She claimed CCC's refusal was unfair because she had not been informed about the 30 days' time limit before she went on her sabbatical or when she returned to work.
18. On 9 August 2017, MC informed Mrs M that the matter had been escalated to HR and Head of Service. On 1 September 2017, MC again confirmed that CCC would not pay SCC as Mrs M had not applied within the 30 days' time limit that was set out in the Leave Policy.
19. On 11 September 2017, Mrs M submitted a complaint under CCC's grievance procedure (**the Grievance Procedure**). She complained that she had not been adequately informed about pension contributions and the 30 days' time limit, either before or after her sabbatical. JB had told her that everything was "on hold". She also claimed she was being subjected to unnecessary stress, even though CCC was at fault, not her.
20. On 15 November 2017, a grievance hearing (**grievance hearing**) took place with CCC's District Safeguarding Manager and others from CCC. A representative from UNISON was also present and reported that Mrs M had been absent from work, with stress. The members of the grievance hearing were also informed that JB had left CCC in May 2017 and could not provide any information.
21. On 24 November 2017, CCC's District Safeguarding Manager rejected Mrs M's complaint. He issued a detailed report. The key points were: -

- Mrs M had not applied for APC nor contacted the Scheme within 30 days of returning to work, as required by the Leave Policy, so no contributions could be paid by CCC on her behalf.
 - Her Line Manager had confirmed that the first date Mrs M contacted CCC about her pension was 24 May 2017, and the first time Mrs M had formally raised the issue of paying APC was 15 June 2017. Therefore, she was out of time.
 - The Leave Policy was available on CCC's intranet throughout her fourteen months' absence. She had a responsibility to check the terms of her sabbatical on the intranet and to query the position with her managers at CCC.
22. On 7 December 2017, Mrs M appealed against this decision. She claimed that the correct processes had not been followed in the grievance hearing and the decision was not "reasonable or proportionate". She also claimed there was a conflict of interest between investigators and management.
23. On 17 January 2018, an oral appeal hearing took place before the Head of Safeguarding, HR support, the Chair of the Grievance Hearing and a representative from UNISON. On 23 January 2018, Mrs M's appeal was rejected. The findings were as follows:-
- There were no procedural irregularities.
 - The Leave Policy clearly states that an employee must elect to pay APC to cover a gap in pensionable service, within 30 days of returning to work.
 - Mrs M had returned to work on 1 March 2017. She had 30 days to elect to pay APC. She did not do so and, accordingly, CCC was not required to pay SCC.
 - Mrs M's Line Manager had confirmed that she had spoken to Mrs M in March 2017, about why pension contributions were not being deducted from her salary. However, she claimed that they did not discuss Mrs M paying APC to cover a gap in pensionable service.
 - It was Mrs M's duty to keep updated on CCC's employment policies and procedures that were freely available on the intranet. This was also a term of her employment contract.
 - There were no written records of her meetings with JB to show what was discussed when she left on sabbatical and when she returned to work. However, the onus is on employees, like Mrs M, to find out about paying pension contributions when they go on unpaid leave.
 - CCC acknowledged that Mrs M was absent from work due to stress. It agreed that this was caused by lack of support from CCC after she returned to work and by the Grievance Procedure.

- CCC recognised that its processes for employees who take unpaid leave could be improved. It confirmed that more information about pension contributions was being given to employees who take a sabbatical, as a result of Mr M's complaint.
24. On 28 January 2018, Mrs M raised a complaint under the first stage of the Scheme's internal disputes resolution procedure (**IDRP**). The first stage decision maker was the HR Director of CCC (**the HR Director**).
25. On 19 May 2018, the HR Director spoke to Mrs M about the arrangements for her sabbatical. He also spoke to the managers who had been involved in the Grievance Procedure (except JB). He explained, in his report, that the facts and issues discussed in the Grievance Procedure were helpful in establishing the facts of Mrs M's complaint.
26. On 16 May 2018, the HR Director issued a formal response to Mrs M, rejecting her complaint. Below is a summary of his conclusions:-
- Firstly, he apologised for not issuing a response, within the two months' time limit required by the IDRP but explained that this was due to errors in CCC's computer systems in March and April 2018.
 - Secondly, he summarised Mrs M's complaint, for the purposes of the IDRP, as based on "reasonableness". The issue is whether it is the employee's responsibility to understand the full implications of an unpaid sabbatical or an employer's responsibility to make her aware of the implications and help her manage them.
 - He concluded that it was an individual's responsibility to find out about the issues that might arise from an unpaid sabbatical, especially pension contributions, even if timescales were short.
 - He also concluded that it was reasonable for CCC to expect Mrs M to take steps to understand the implications of a decision to go on an unpaid sabbatical for a long period and the effect on her pension.
27. The HR Director also made the following observations on the issue:-
- The purpose of the IDRP was to consider the payment of APC and not the process for Mrs M's sabbatical.
 - The Leave Policy clearly stated that a sabbatical was unpaid, with no pension contributions and that there was a 30 days' option deadline to apply for APC and SCC. Mrs M had not applied within the 30 days' time limit.
 - Mrs M had raised issues about her pension with her Line Manager in March 2017 but had not made a formal request about paying pension contributions to cover her sabbatical, until June 2017. This was more than three months after she returned to work on 1 March 2017 and therefore was out of time.

- In the Grievance Procedure, Mrs M had accepted that she had access to employment policies on CCC's intranet. The fact that she was not paying pension contributions during her sabbatical should have put her on notice to check the position on the intranet or ask for information.
 - CCC needed to manage its financial responsibility to pay pension contributions in a "time-limited" way.
 - HR had announced that CCC intended to review its unpaid leave process in case there were any learning points from this case.
28. On 6 June 2018, Mrs M appealed under the second stage of the Scheme's IDRP. The second stage reviewer was the administering authority, Cambridgeshire Pension Fund (**CPF**), and the appointed officer was the interim executive director of LGSS Law Ltd.
29. The second stage reviewer considered that Mrs M's complaint was essentially, that CCC had failed to properly exercise its discretion under Regulation 16 (16) of the LGPS Regulations in considering whether to extend the 30 days' application period for SCC. She rejected Mrs M's complaint stating that, in her view: -
- CCC's decision under Regulation 16 (16) had taken account of the circumstances and could not be considered as perverse.
 - Mrs M did not ask if she could pay APC within 30 days of her return to work, as required under the Leave Policy nor did she contact the Scheme during her sabbatical.
 - CCC had decided not to allow Mrs M a longer period to apply for APC and hence, SCC, because the 30 days' period for making an election was clearly set out in the Leave Policy that applied to all employees.
 - CCC's decision not to extend the 30 days' application period had been considered three times in two hearings during the Grievance Procedure and at the first stage IDRP.
 - CPF had no power to force any Scheme employer to apply its discretion, in any way, and each employer could exercise its discretion as it thought fit.
30. On 21 October 2018, Mrs M submitted a complaint to us. As part of her submissions, she claimed that CCC had failed to inform her about the 30 days' time limit, before and after her sabbatical. She had asked about her pension contributions in March 2017, when she was within the time limit but only received a final decision in September 2017. CCC has admitted that improvements were needed to its Leave Policy but had still refused to pay a share of her pension contributions. She claimed that this was a violation of her employment rights.

31. In March 2019, in response to Mrs M's complaint, CCC and CPF provided further information, including a copy of the Scheme's IDRPs, the Leave Policy and CCC's written policy on the exercise of its discretions under the Scheme, dated June 2015 (**the discretions policy**). Relevant extracts are set out in the Appendix to this Determination.
32. CCC has also provided a copy of the call report and correspondence between Mrs M and Payroll. In addition, CCC confirmed that Mrs M has not yet paid APC to the Scheme because she believes that CCC should share the costs.

Adjudicator's Opinion

33. Mrs M's complaint was considered by one of our Adjudicators who concluded that further action was required by CCC. The Adjudicator's findings are summarised below:-
 - In the Adjudicator's opinion, the main issue was whether CCC properly exercised its discretion under Regulation 16 (16) of the LGPS Regulations, in deciding not to extend the period in which Mrs M could apply for SCC.
 - The Adjudicator noted that where an employer exercises a discretionary power, there is an implied duty of trust and confidence between an employer and its employees, in both employment and pension matters. In the Adjudicator's view, the relevant principles were confirmed by the Court of Appeal in *IBM v Dalglish* [2017] EWCA 1212.
 - The Adjudicator said that essentially, an employer like CCC, must act in good faith and should not exercise its powers under a pension scheme to seriously damage the relationship of trust and confidence between employer and employee. This included a requirement that the relevant power should be exercised for its proper purpose, a decision must not be irrational or flawed and an employer is entitled to have regard to its own financial interests, such as costs.
 - In the Adjudicator's opinion, there was no evidence that CCC properly considered whether to allow Mrs M to apply for SCC, after the 30 days' deadline, in accordance with these principles because CCC focused on the fact that the Leave Policy expressly required Mrs M to apply for SCC within 30 days of her return to work and did not consider that it had a discretion to extend the time limit under the LGPS Regulations.
 - CCC also did not consider the specific circumstances of Mrs M's complaint as required under its discretions policy. Additionally, CCC did not contact JB to corroborate Mrs M's assertion that she was not told about the 30 days' deadline, and CCC did not provide meeting notes.

- In the Adjudicator's opinion, it was not reasonable for CCC to expect Mrs M to check the intranet while on sabbatical, because she understood that everything was "on hold". CCC also had a responsibility to provide Mrs M with a copy of the Leave Policy or should have told her where she could find the relevant information, prior to her sabbatical.
- The first stage IDRP decision suggested that managing costs was a factor in CCC's decision. However, there was no evidence of this. CCC would have been required to pay its share of contributions had Mrs M applied in time.
- CCC has also announced that, in future, more information, particularly about pensions, would be provided to employees who took a sabbatical. So, it is unfair that others may be encouraged to apply for SCC, at a cost to CCC but Mrs M' was not provided with additional information and guidance.
- In the Adjudicator's view, on the balance of probabilities, had Mrs M been made aware of the time limit, she would have applied for SCC before the expiry of the 30 days' deadline.
- Accordingly, in the Adjudicator's opinion, the decision-making process was not carried out properly and was flawed. Therefore, CCC should review Mrs M's complaint again, taking into account Regulation 16 (16) of the LGPS Regulations.
- The Adjudicator also thought this situation had caused Mrs M significant distress and inconvenience and Mrs M should therefore receive an award in recognition of this.

34. CCC did not accept the Adjudicator's Opinion and, in response, made the following comments:-

- It was still possible for Mrs M to pay APC to cover her period of unpaid leave though CCC would not contribute to the cost because she had not submitted her application within the 30 days' time limit in the Leave Policy
- Mrs M's complaint was fully investigated, and a reasonable decision was reached, in all the circumstances. Mrs M's grievance was heard by a senior manager and then by an appeal panel, so a fair and due process had been followed.
- CCC also believes that Mrs M would have and must have accessed information about her pensions contributions before requesting a sabbatical, even though there is no written evidence that she was informed about this.

- It is not normal practice for informal discussions to be recorded, so there was no oversight in Mrs M's case.
- CCC is a large employer of about 4,500 people, and the Leave Policy is readily available to all on the intranet. It is the responsibility of all employees to make sure they are well informed before they choose to take a sabbatical. CCC accepts that there are differences of opinion and recollection in Mrs M's complaint but states that the Leave Policy is clear and has been followed without incident, by others.
- If CCC is required to reconsider Mrs M's complaint and as a result, SCC are made, she will have suffered no detriment. In that case, an award of £500 would be unreasonable, given the amount of consideration that CCC has already given to her complaint.

35. Consequently, Mrs M's complaint was passed to me to consider. CCC's further submissions do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by CCC for completeness

Ombudsman's decision

36. This case is unusual because CCC originally considered Mrs M's complaint in a grievance hearing of employment matters under its Leave Policy and it was then reviewed through the IDRP, as a pensions issue. However, the facts remain the same in both cases and so I have taken into account what was said at all previous hearings.
37. I consider that the LGPS Regulations are central to this complaint. I find that the crux of Mrs M's complaint is that CCC failed to properly consider the discretion it has, under Regulation 16 (16) of the LGPS Regulations, to extend the period she could apply for SCC.
38. Regulations 15 (15) and 16 (16) of the LGPS Regulations provide that if a Scheme member elects to pay APC, the employer must contribute two-thirds of the cost of the arrangement, as SCC, but only if the member makes the election within 30 days of returning to work from unpaid leave, or such longer period as the employer allows.
39. I accept that CCC refused to pay SCC because the Leave Policy specifically states that an application must be made within 30 days of returning to work and Mrs M applied out of time. I also accept that CCC is not required to pay SCC under Regulation 15(15) if Mrs M applied out of time.
40. However, I consider that CCC did not properly consider that it had a discretion to extend the time limit under Regulation 16 (16) of the LGPS Regulations, nor did it take account of its discretions policy. I find that CCC's decision not to pay SCC for Mrs M rested solely on its view that she should have known about the 30 days' time limit in the Leave Policy.

41. I note that in its further submissions, CCC implies that it did not specifically refer to extending the 30 days' time limit under the LGPS Regulations, but it had acted "reasonably". It says it thoroughly reviewed its decision in several hearings and concluded that it would not be reasonable to extend the time limit as Mrs M herself had a responsibility to find out about the pensions implications of taking a sabbatical.
42. However, I consider that the key point in this complaint is that CCC did not recognise that its obligation to pay SCC derived from the LGPS Regulations, not its Leave Policy. Nor did it recognise that it had a discretion to extend the 30 days' time limit under the LGPS Regulations and its discretions policy in the circumstances of Mrs M's case, even though this was not set out in the Leave Policy.
43. Instead, CCC focused on employment issues and the strict time limit, specified in the Leave Policy. It did not review her application in the context of its requirements under the Scheme or question whether the Scheme had or should have provided Mrs M with information about pension contributions during unpaid leave. I consider that this is maladministration on the part of CCC.
44. Nevertheless, I emphasise that this Determination does not decide whether it was reasonable for CCC to expect Mrs M to access information about the pensions implications of a sabbatical, that was readily available to all employees on the intranet, before she went on sabbatical or during her period of absence. This Determination is concerned with the failure of CCC to expressly have regard to its discretion under Regulation 16 (16) of the LGPS Regulations, in considering Mrs M's complaint.
45. Accordingly, I find that CCC should reconsider Mrs M's complaint with express reference to Regulation 16 (16) of the LGPS Regulations.
46. I also consider that Mrs M has suffered significant distress and inconvenience because of CCC's failure to properly consider extending the 30 days' time limit under the LGPS Regulations and that an award of £500 is appropriate. This award is in recognition of the non-financial injustice caused by its maladministration. It is not related to any decision CCC might make in future about Mrs M's application for SCC or the fact that it has already extensively reviewed her complaint.

Therefore, I uphold Mrs M's complaint, in part.

Directions

47. Within 28 days of the date of this Determination, CCC shall reconsider its decision not to allow Mrs M to elect to pay APC (and hence SCC) more than 30 days after her return to work from unpaid leave, with specific reference to Regulation 16 (16) of the LGPS Regulations and, CCC shall promptly inform Mrs M of the outcome.

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48. In addition, within 14 days of the date of this Determination, CCC shall pay £500 to Mrs M, in recognition of the significant distress and inconvenience this situation has caused her.

Anthony Arter

Pensions Ombudsman

10 July 2019

Appendix

The Local Government Pension Scheme Regulations 2013 [SI 2013/2536]

Regulations 15 (5) and 15 (6)

- 15(5) "Subject to paragraph (6), if an active member who is absent from work with permission with no pensionable pay otherwise than because of illness or injury, child-related leave or reserve force service leave, elects to enter into an arrangement to pay additional contributions under regulation 16 (additional pension contributions), the member's Scheme employer must pay contributions under regulation 16 (2) (e) or (4) (d) (shared cost additional pension contributions) to meet two-thirds of the cost of the arrangement.
- 15(6) The amount that a Scheme employer can be required to pay under paragraph (5) may not exceed the cost of an arrangement which would give rise to additional pension accrual equivalent to that which a member would have accrued if treated as receiving assumed pensionable pay for the period of absence from work up to a maximum period of 36 months."

Regulation 16 (16)

- 16(16) "Where an arrangement is one to which regulation 15 (5) (employer contributions during absences) applies, application by an active member to make the arrangements under this regulation must be made before the expiry of a period of 30 days beginning with the day on which the person returns to work or such longer period as the Scheme employer may allow".

CCC Leave Policy

"Members of the Local Government Pension Scheme (LGPS) will not have contributions paid into the fund during an unpaid period of leave. Employees may choose to purchase an additional pension contribution (APC) to buy pension lost during the period of authorised unpaid absence.

Where an employee elects to purchase an APC within 30 days of returning to work we will pay 2/3rds of the cost. If an employee elects to buy an APC after this 30-day period, the full cost must be met by the employee. Where an employee decides not to purchase an APC the

period of unpaid leave will not count in any way for pension purposes. Employees should contact the Pension's Service to arrange the purchase of an APC."

Cambridgeshire County Council LGPS Policy on Discretions

Shared Cost Regulation 16 (16) July 2015

"Whether to extend the 30-day deadline for members to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve force service leave).

The Council will only extend the 30-day deadline in specific circumstances (e.g. purchasing of additional leave) and on a case by case basis where there are reasonable grounds for allowing a member to have more time to make an election "