

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mr L Lambert
Scheme	The Local Government Pension Scheme (LGPS)
Respondent(s)	Hertfordshire County Council (HCC)

Subject

Mr Lambert has complained that HCC have declined to grant him 10 years' additional pensionable service. He has complained that they have failed to exercise their discretion in a proper manner.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld in part against Hertfordshire County Council because they failed to consider whether there were exceptional circumstances which warranted the exercise of their discretion under Regulation 12.

DETAILED DETERMINATION

Material Facts

1. Mr Lambert's employment transferred to HCC from Watford Borough Council (**WBC**) in 2002 under a TUPE81¹ transfer. In 2012, HCC proposed to transfer Mr Lambert's role to Ringway as part of a wider restructuring of their Highways Service. This would involve him changing his work location.
2. Mr Lambert requested a copy of HCC's policy on the exercise of discretion to enhance membership. In response, HCC said that it was generally understood that early retirement rights transferred under TUPE81, but it was not their policy to award augmented membership unless there were exceptional circumstances. Mr Lambert contacted HCC's HR department and explained that he was a WBC TUPE81 employee. He said that he had a clause in his terms and conditions of employment which provided for the enhancement of his membership at the employer's discretion. Mr Lambert said that he had read HCC's early retirement policy, but this did not include the information he required. In response, HCC said that TUPE81 did not cover pensions when Mr Lambert had transferred from WBC. They said that HCC's pension scheme applied to him and they had not applied the employer's discretion to enhance a pension for many years, which is why it was not included in their literature. They went on to say that Mr Lambert would, however, benefit from an enhanced redundancy rate if made redundant.
3. As part of the restructuring exercise, Mr Lambert was asked to complete a form providing information about his job and any disability or caring requirements. Mr Lambert explained that his current working environment was adapted for his disability and, in particular, he needed to be no more than 30 minutes' travelling distance from his home. The proposed change in location would have meant moving from an office located three miles from Mr Lambert's home to one which was located 40 miles from his home. In answer to the question was he considering taking voluntary redundancy, Mr Lambert said he did not have a better choice. He also said that he was a TUPE81 transfer employee and that he was on different terms and conditions to other HCC staff.

¹ The Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI1981/1794) (as amended)

4. Mr Lambert said that the relevant document covering his entitlement to voluntary redundancy was WBC's "Framework For Transferring Affected Employees – Employment Agreement" (the **Employment Agreement**). In particular, Mr Lambert referred to paragraph 11.2 which states,

"Early retirement in this context [voluntary severance] means an arrangement whereby employment is terminated before normal retirement age and where the employee has not yet qualified for their maximum pension entitlement.

Superannuation Regulations set a ceiling on pension enhancements and it has been agreed by the Council previously that the maximum compensatory (*sic*) enhancements will be granted to employees taking early retirement or redundancy and who qualify for these enhancements. An employee must have a minimum of 5 years reckonable and qualifying service in order to obtain enhanced benefits which will take the form of added years and will be the shortest of the following periods:

1 10 years

2 a period equivalent in length to the aggregate of reckonable and qualifying service

3 service to the age of 65 minus the employee's age

4 a period which when added to the reckonable service does not exceed 40 years.

Wherever justified and permissible under the provision of the scheme these will be awarded to afford the maximum benefits to the individual. Entitlements will vary according to the circumstances of the individual and each employee considering voluntary severance or early retirement will have their benefits calculated and have the opportunity to receive counselling before reaching a decision."

5. Mr Lambert said that he qualified under the criteria within this document and requested enhanced benefits. He said that the Employment Agreement dealt with redundancy rights and was, therefore, covered by TUPE81. Mr Lambert cited *Beckmann* and *Martin*² and said that redundancy benefits payable under an occupational pension scheme were not deemed to be "old age benefits". HCC's HR department subsequently sent Mr Lambert an estimate of his redundancy payment and said that, "Using the Watford ready reckoner available at the time of [his] transfer", he was entitled to 27 weeks' pay.

² *Beckmann v Dynamco Ltd* [2003] ICR 50; [2002] 064 PBLR (030); [2002] PLR 287, *Martin & others v South Bank University* [2004] 1 CMLR 472; [2003] 041 PBLR (019); ECJ Case C-4/01

6. HCC sought information from WBC concerning Mr Lambert's terms and conditions. In particular, they asked if paragraph 11.2 of the Employment Agreement was still valid. HCC asked WBC to provide a copy of their redundancy policy and whether Mr Lambert would be entitled to added years on voluntary redundancy under their scheme. WBC confirmed that the Employment Agreement had been referred to in Mr Lambert's contract of employment and provided a copy of their 2004 Employment Agreement.
7. HCC wrote to Mr Lambert confirming that his redundancy entitlement had been based on his WBC terms and conditions and that, if he took voluntary redundancy, he would be entitled to have his pension released. HCC said that they had contacted WBC regarding the status of the Employment Agreement and that they had confirmed that the granting of added years was discretionary. HCC said that, as this was a discretionary policy and not an entitlement, they would not be exercising the discretion to award added years. HCC provided Mr Lambert with a copy of their e-mail exchange with WBC and said that they would not be exercising their discretion to award added years because "this [was] not something offered to employees".
8. In a subsequent letter sent to Mr Lambert following a grievance meeting, HCC said that, as they were endeavouring to make significant savings and because enhanced benefits had not been provided for employees on HCC terms and conditions, they were unable to support Mr Lambert's request for an additional 10 years' service. Mr Lambert was asked if this affected his decision to take voluntary redundancy. HCC referred to the Employment Agreement and an early retirement policy statement from WBC. They noted that the policy statement said that an employee aged over 50 with at least five years' continuous service "may be entitled to enhanced benefits, dependent on the discretions adopted by [WBC]". HCC also noted that the Employment Agreement stated "Wherever justified and permissible under the provision of the scheme these will be awarded to afford the maximum benefits to the individual". HCC said that they did not consider that it was justified "on this occasion and in this economic climate to enhance [Mr Lambert's] pension".
9. In response to Mr Lambert's stage two grievance submission, HCC said he had the option not pursue voluntary redundancy but chose to do so in the knowledge that no additional LGPS membership would be awarded. With regard to Mr Lambert's submission that Ringway would not have provided suitable

adjustments for his disability, HCC said that they had discussed this with Ringway who had indicated that, in principle, reasonable adjustments would be made. HCC referred to a Cabinet report dated 19 February 2007 which they said set out their policy on the exercise of discretion. They pointed out that this stated that in the case of members aged over 50 who were made redundant no added years would be awarded.

10. HCC reviewed their policy on the exercise of discretionary powers under the LGPS in 2007. The revised policy in the case of members who were made redundant or retired on the grounds of efficiency stated that added years would no longer be awarded. The 2007 policy also included a new provision,

“Where individuals are eligible to retire the county council can, in exceptional circumstances, grant added years to a level to be determined at the time but of course within the number permitted under the national scheme. In such instances, the decision will be made by the Corporate Director of People & Property in consultation with the Finance Director and Executive Member for resources.”
11. Notes to the policy document stated that this “Flexibility” provision was to be used only rarely and was included to allow flexibility in complex cases if required.
12. Mr Lambert submitted an appeal under HCC’s internal dispute resolution (**IDR**) procedure. A stage one decision was issued on 26 June 2013. The decision maker said that HCC had acted within the confines of their LGPS discretions policy. She went on to say that, under the 2007 policy, HCC did not award added years and it had been made clear to Mr Lambert that he was not entitled to added years before he accepted voluntary redundancy. With regard to Mr Lambert’s claim that his exceptional circumstances had not been considered, the decision maker said that she did not consider his circumstances to be so exceptional to warrant the award of added years.
13. Mr Lambert appealed further. A stage two IDR decision was issued on 31 October 2013. Mr Lambert’s appeal was dismissed. The decision maker agreed that the right to be considered for added years could transfer under TUPE. She also found that the Employment Agreement transferred to HCC, but went on to say that, at the time Mr Lambert left their employment, they no longer had the discretion to award added years. The decision maker explained that the Local Government (Early Termination of Employment)(Discretionary

Compensation)(England and Wales) Regulations 2000 (the **2000 Discretionary Compensation Regulations**) (SI2000/1410) (as amended) had been revoked and replaced by the Local Government (Early Termination of Employment) (Discretionary Compensation)(England and Wales) Regulations 2006 (the **2006 Discretionary Compensation Regulations**).

Summary of Mr Lambert's Position

14. The key points in Mr Lambert's submissions are summarised below:

- HCC failed to act in good faith and made it impossible for him to become entitled to enhanced pension benefits on redundancy, even though he met the relevant criteria.
- He is a TUPE81 employee from WBC and was employed by HCC on WBC terms and conditions.
- The defining documents relating to his redundancy benefits are WBC's early retirement policy statement and the Employment Agreement. HCC inherited these when he transferred and they are binding upon them.
- Under TUPE81, his redundancy rights with WBC transferred to HCC.
- He was entitled to be considered for an enhanced pension on being made redundant. Mr Lambert refers to the document "Staff Transfers in the Public Sector – Statement of Practice".
- In answer to a query raised in 2008, HCC referred to the Employment Agreement and said that, if his post were to be deleted or redundant, "added years would be ...". This was a statement of obligation, not possibility.
- HCC failed to give proper consideration to his circumstances and failed to follow their own policy.
- HCC failed to publish their policy as required. It was not easily located on their website and is not in an easily read format which does not meet with the spirit of the Regulations. HCC's own pensions and HR staff were unable to locate the policy when he requested sight of it. Mr Lambert cites Regulations 18C and 18E of the Occupational, Personal and Stakeholder Pension Schemes (Disclosure of Information) (Amendment) Regulations 2010.

- HCC's Flexibility policy requires a decision on exceptional circumstances to be made by the Corporate Director of People & Property in consultation with the Finance Director and Executive Member for Resources. Because staff were unaware of the policy, his case was not passed to the appropriate people for a decision. Mr Lambert cites PO decision Q00456.
- HCC have failed to say why his exceptional circumstances failed to justify any consideration for enhanced benefits.
- In addition to his disability and the associated adjustments required, he is also the only remaining TUPE81 employee from WBC and this should also be considered as one of his exceptional circumstances.
- If HCC's policy was not published, it was not valid because, under the Regulations, a policy cannot be implemented until a month after publication.
- If HCC's current policy is not valid, then the policy which applied previously must still apply. That policy allowed for the award of added years. Mr Lambert cites PO decision 74569/I
- HCC's early retirement policy does not apply to him because he has different terms and conditions. Nor did it include how their discretions would be applied.
- His redundancy payment was not calculated by reference to HCC's own policy but by reference to the Employment Agreement.
- He is contractually entitled to be considered for added years. HCC's policy makes it impossible for him to become entitled to be considered for the benefits provided by his terms and conditions of employment and, in effect, frustrates his contract. He has not agreed to any variation of his contract.
- TUPE81 prevents him from agreeing to vary his terms and conditions. Mr Lambert cites *Regent Security Services Limited v Power* [2007] EWCA Civ 1188
- When HCC amended their discretions policy in 2007 would have been an appropriate time to review and vary his contract if HCC had wished to

do so. HCC did not vary his contract and, therefore, his entire contract was still valid after their policy was amended. This included the employer's obligation to consider awarding added years.

- He is disabled. As a result, HCC's occupational health unit imposed specific restrictions on his working conditions. HCC effectively forced him to take voluntary redundancy to mitigate his losses. He was placed on the list to transfer to Ringway, but was convinced that this was not feasible because they could not make the necessary adjustments; particularly, the requirement that he should not work more than 30 minutes away from his home.
- He is in the best position to judge his own capabilities and he believed that a move to Ringway would be detrimental. Mr Lambert cites *Tapere v South London and Maudsley NHS Trust* [2009] UKEAT/0410/08 and PO decision *Bohanna* N01369 3 January 2007.
- He was concerned that, had he transferred to Ringway, he would have been made redundant shortly afterwards because there were more staff transferring than vacancies at Ringway.
- He will be substantially disadvantaged financially as a result of losing his job; he has lost the opportunity to accrue a larger pension. On the other hand, there were significant financial and operational benefits for HCC.
- Because of his age and disability, he will find it difficult to gain alternative employment. Prospective employers would have extra costs because of the need to accommodate his disability requirements.
- HCC cited the fact that they were endeavouring to make significant savings and the fact that they had not provided enhanced benefits for employees on HCC terms and conditions as reasons for not supporting his request for enhanced benefits. His redundancy saved HCC a considerable amount; more than from a non-TUPE, non-disabled employee. HCC have not given a definition of "significant savings" and, thereby, frustrate any challenge to their decision. Nor can he find any reference in his terms and conditions or the Regulations that allows for having employees on different terms and conditions to be a justification not to enhance his benefits.

Summary of HCC's Position

15. The key points in HCC's submissions are summarised below:

- They do not accept that they did not act in good faith.
- They do not accept that Mr Lambert was entitled to enhanced pension benefits on redundancy or could have become entitled to enhanced benefits.
- Because Mr Lambert could not become entitled to enhanced benefits, there was no case to put forward under "exceptional circumstances".
- They do not accept that they provided Mr Lambert with incorrect or misleading information or that they failed to comply with the LGPS Regulations or any other statutory requirements.
- TUPE81 provided that, when a person's employment is transferred, the new employer takes over all rights and obligations arising from the contract of employment except provisions relating to benefits for old age, invalidity or survivors under an occupational pension scheme.
- Regulation 12 of TUPE81 provided that any agreement is void insofar as it purports to exclude or limit the operation of Regulation 5. *Regent Security Services Ltd* concerned post transfer variations to an employee's contract of employment. It was found that employees could not be deprived of TUPE rights by agreeing to vary the terms of their contract, but this did not prevent the acquisition and enforcing of new rights.
- Regulation 8 of the Local Government (Discretionary Payments) Regulations 1996 provided that an authority could credit an eligible person with up to 10 years of LGPS membership. This provision was revoked, with effect from 21 June 2000, by 2000 Discretionary Compensation Regulations. The 2000 Discretionary Compensation Regulations made provision for an employing authority to award up to 10 years. The 2000 Discretionary Compensation Regulations were themselves revoked and replaced by the 2006 Discretionary Compensation Regulations. The 2006 Regulations make no provision for added years.

- Regulation 52 of the LGPS Regulations 1997 allowed employing authorities to increase a member's total membership by up to 6 years and 243 days depending on the circumstances. In *Worral and others v Wilmott Dixon Partnership Ltd and Anor* [2010] UKEAT/0521-24/DM it was found that the power to award added years had been removed following the coming into force of the 2006 Regulations.
- An entitlement to be considered for added years can transfer under TUPE.
- The question in Mr Lambert's case is whether the entitlement referred to in the Employment Agreement attained contractual status and thus transferred to HCC. It is their view that the Employment Agreement did transfer to HCC. For example, Mr Lambert's redundancy payment was calculated on the basis of WBC's ready reckoner.
- However, at the time Mr Lambert left HCC's employment, they were not obliged to consider exercising discretion to award added years. By 2012, employing authorities no longer had the discretion to award added years because the 1996 and 2000 Regulations no longer applied.
- WBC's policy must have been formulated by reference to the 1996 Regulations. By the time of Mr Lambert's transfer, the 2000 Discretionary Compensation Regulations applied. However, the 2006 Discretionary Compensation Regulations applied by the time his employment with HCC ceased. As a result, the contractual provision relating to awarding added years was no longer effective and HCC could not award added years.
- Even if this was not the case, Mr Lambert had waived any contractual right to be considered for added years by accepting voluntary redundancy on the terms offered to him. He had continued with his application for voluntary redundancy in the knowledge that he was not being awarded any added years.
- The right to leave HCC's employment under voluntary redundancy without added years was, in effect, a new right given to him as an alternative to a further TUPE transfer. It was an option he did not have to pursue if he did not want to.

- They do not accept that a TUPE transfer to Ringway was not a feasible alternative given that Ringway were prepared to make reasonable adjustments to accommodate Mr Lambert's disability. Those adjustments should have been tested.
- Given that they determined that the Employment Agreement did transfer, they did not have to respond to the points raised by Mr Lambert concerning their discretions policy.
- Their discretions policy has since changed, but they accept that it is the policy in force at the date Mr Lambert's employment terminated which should apply.
- The posts and titles of the officers referred to in the discretions policy have since changed. They consider that the Head of Human Resources and Organisational Development is the equivalent to the Corporate Director of People and Property, the Deputy Chief Executive is the equivalent of the Finance Director, and the Executive Member for Resources and Transformation is the equivalent of the Executive Member for Resources. Whilst these officers are not all authorised to make decisions under the current policy, they consider it appropriate that they do so in Mr Lambert's case.

Conclusions

16. When Mr Lambert transferred from WBC to HCC in 2002, TUPE81 applied. Regulation 5 of TUPE81 provided that the transfer should not operate so as to terminate Mr Lambert's contract of employment. Instead, it was to have effect as if it had been made between Mr Lambert and HCC. All of WBC's rights, powers, duties and liabilities under the contract transferred to HCC. However, Regulation 7 contained a pension scheme exclusion. This provided that Regulation 5 did not apply to so much of the contract which related to the occupational pension scheme (LGPS) or to any rights, powers, duties and liabilities relating to the scheme. However, any provisions of the pension scheme which did not relate to benefits for old age, invalidity or survivors were to be treated as not being part of the scheme.
17. At the time of Mr Lambert's transfer to HCC, an employer had the discretion to award 'added years' when an employee was made redundant either under

Regulation 52 of the LGPS Regulations 1997 (SI1997/1612) (as amended) or under Regulation 8 of the 2000 Discretionary Compensation Regulations. Regulation 7 of the 2000 Discretionary Compensation Regulations provided that an individual was only eligible for an award under Regulation 8 if his membership of the LGPS was not being increased under Regulation 52. A similar exclusion was contained in Regulation 52. Under Regulation 52, the employing authority could resolve to increase the individual's membership by the *shortest* of: his total membership to the date of leaving; 40 years less total membership to date of leaving; the period from date of leaving to age 65; or 6 years and 243 days. The amount of added years which could be awarded under Regulation 8 was similarly restricted to the shortest of various options as set out in WBC's Employment Agreement.

18. Benefits payable under the LGPS Regulations on redundancy were/are not benefits for old age, invalidity or survivors and, therefore, they transferred under TUPE81. Under the LGPS Regulations, the benefits potentially payable on redundancy consisted of two elements. Under Regulation 26, provided certain conditions were met, the member was *entitled* to the early payment of his pension and lump sum calculated by reference to his total membership at the date of leaving. Any enhancement under Regulation 52 was at the employer's discretion and the Courts have decided that what transfers in such circumstances is the right to be considered for an enhancement.³
19. The LGPS Regulations 1997 contained a requirement that administering authorities and Scheme employers should formulate policies as to the exercise of certain discretionary powers. The discretion contained in Regulation 52 was *not* one of these. Regulation 26 of the 2000 Discretionary Compensation Regulations, however, did require employers to "formulate, publish and keep under review" their policy on the exercise of discretionary power under Regulation 8. Should an employer amend its policy, it was required to publish a statement of the amended policy within one month of the decision and could not give effect to the amendment until one month after publication. WBC complied with the requirements of Regulation 26 by publishing the Employment Agreement.

³ *Proctor & Gamble Company v Svenska Cellulosa Aktiebolaget SCA & another* [2012] EWHC 1257 (Ch)

20. The question is whether and to what extent WBC's policy transferred to HCC in 2002 and then whether the policy remained in force in 2012.
21. TUPE81 operated so as to transfer WBC's rights, powers, duties and liabilities under and in connection with Mr Lambert's contract of employment to HCC. WBC have confirmed that the Employment Agreement was referred to in Mr Lambert's contract of employment. It is a moot point whether a policy on the exercise of a discretionary power could be said to be a right, power, duty or liability. The power is the discretion to award 'added years'. It might be argued that a duty to formulate a policy existed and could transfer, but whether an existing policy could, itself, transfer seems less clear. In any event, the policy was just that and could not operate so as to fetter the discretion contained in Regulation 8. Even if WBC's policy did transfer to HCC, they would not be bound by it and would have to consider Mr Lambert's case on its merits. The policy exists to provide some degree of consistency and to give employees an indication of how the discretion may be exercised.
22. Accepting for the moment that paragraph 11.2 of the Employment Agreement did transfer to HCC in 2002, the question is then whether it was still in force in 2012.
23. In 2006, the 2000 Discretionary Compensation Regulations were revoked by the 2006 Discretionary Compensation Regulations (save for certain provisions which do not apply in Mr Lambert's case). There is no provision to award 'added years' under the 2006 Discretionary Compensation Regulations; instead, an employer may award a lump sum payment. The requirement to formulate and publish a policy was carried forward into the 2006 Discretionary Compensation Regulations.
24. WBC's Employment Agreement was clearly formulated in order to comply with the requirement under Regulation 26 of the 2000 Discretionary Compensation Regulations. Although it refers to the "Superannuation Regulations", the benefit limits referred to are those set out in Regulation 8 of the 2000 Discretionary Compensation Regulations. The Agreement provides that "Wherever justified and permissible" added years would be awarded "to afford the maximum benefits to the individual". The Agreement, therefore, provided that WBC would award added years where they were permitted to do so by the statutory provisions contained in the 2000 Discretionary Compensation Regulations. When the 2000

Discretionary Compensation Regulations were revoked, WBC (and, it follows, HCC) were no longer permitted to award added years under Regulation 8. I find, therefore, that paragraph 11.2 of the Employment Agreement was no longer in force in 2012.

25. There was some discussion in the *Worrall* case as to whether the fact that power to award added years was carried forward in the LGPS (Benefits, Membership and Contributions) Regulations 2007 (SI2007/1166) (as amended) helped the member's claim. The judge decided that this submission failed to recognise that there was a difference between the two regimes. I can see no reason not to reach the same conclusion in Mr Lambert's case. In fact, I find that the picture is clearer in Mr Lambert's case because the Employment Agreement set out various options for the amount of added years to be awarded and these clearly refer to those contained in the 2000 Discretionary Compensation Regulations.
26. Mr Lambert has argued that HCC failed to publish a policy statement as required under Regulation 7 of the 2006 Discretionary Compensation Regulations. He says it took him some time and effort to find the 2007 policy on HCC's website and that this is not in the spirit of the Regulations. Mr Lambert goes further to argue that, in consequence, HCC cannot give effect to the 2007 policy. Regulation 7 is silent as to what HCC should do to publish any policy or amendment. It is questionable whether locating it on a website without making staff aware of it meets the requirements of Regulation 7. Even if this were the case, however, it does not assist Mr Lambert. He cannot require HCC to award or even consider awarding added years under the 2000 Discretionary Compensation Regulations since their revocation.
27. TUPE81 did not make any specific provision concerning changes to terms and conditions after the transfer. Following the European Court of Justice decision in *Daddy's Dance Hall*⁴, UK Courts took the view that any change which was connected to the transfer was void. This has now been provided for specifically in the current TUPE Regulations. However, the change to the power to award added years was not connected to the 2002 transfer, but to the 2006 revocation of the 2000 Discretionary Compensation Regulations.

⁴ *Foreningen af Arbejdsledere i Danmark v Daddy's Dance Hall A/S* [1988] IRLR 315

28. I do not uphold Mr Lambert's complaint concerning HCC's refusal to grant added years under the Employment Agreement.
29. Under Regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007, an employing authority may resolve to increase the total membership of an active member by up to 10 years. Regulation 66 of the LGPS (Administration) Regulations 2008 (SI2008/238) (as amended) requires an employing authority to prepare and keep under review a written statement of its policy on the exercise of this discretion. HCC's policy was reviewed in 2007. It provided that added years would not be awarded where an individual is made redundant or retires in the interests of efficiency. I note that the 2007 policy refers to the exercise of HCC's discretions under the LGPS, although they appear to have applied it to discretions under the Discretionary Compensation Regulations also. I believe that, strictly speaking, HCC should have had a separate policy for discretionary compensation, but this has no bearing on Mr Lambert's case and I do not propose to make any finding as such.
30. HCC's policy also included a "Flexibility" clause which allowed for them to award added years "in exceptional circumstances". The policy required a decision to be made by HCC's Corporate Director of People & Property in consultation with their Finance Director and the Executive Member for Resources. Other than the IDR stage one decision maker's opinion that she did not consider that Mr Lambert's circumstances were so exceptional as to warrant the award of added years, there appears not to have been any consideration of this option. The focus has been on whether Mr Lambert should have been considered for and/or awarded added years under the Discretionary Compensation Regulations. I uphold Mr Lambert's complaint that his circumstances were not considered properly under HCC's policy.
31. The power to award added years under Regulation 12 is a discretion. It is for HCC to exercise and I make no finding as to whether it would be appropriate for Mr Lambert to receive any additional membership. The correct course of action is for me to remit the decision for HCC to consider. It may well be that, having given the matter due consideration, they come to the decision that no award is appropriate, but the case has not been through the process set out in the policy as yet. Mr Lambert has made submissions concerning the financial savings made by his voluntary redundancy which he considers support his case

for added years. It would not be appropriate for me to comment on the validity of the case put forward by Mr Lambert; it is for HCC to consider.

32. HCC have explained that the posts referred to in their 2007 policy have changed and they have provided details of the current, equivalent posts. I agree that it would be reasonable for the equivalent officers to consider Mr Lambert's case.
33. I have not considered the submissions put forward by Mr Lambert as to whether a transfer to Ringway was a feasible option for him. The restructuring, transfer and redundancy exercise is an employment matter and not within my remit.

Directions

34. I direct that, within 35 days of the date of my final determination, HCC are to arrange for Mr Lambert's case to be considered by their Head of Human Resources and Organisational Development, their Deputy Chief Executive and the Executive Member for Resources and Transformation. Mr Lambert is to be given the option to make a further submission in support of his case if he wishes. When the Head of Human Resources and Organisational Development, Deputy Chief Executive and Executive Member for Resources and Transformation have reached a decision, they are to provide Mr Lambert with a written response outlining their reasons for the decision. He is to be given the option to appeal if he wishes to.

Jane Irvine
Deputy Pensions Ombudsman

19 December 2014