

Ombudsman's Determination

Applicant	Mr R
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Stockton Borough Council (the Council) Kier Pensions Unit (Kier)

Outcome

1. Mr R's complaint against the Council and Kier is partly upheld. To put matters right the Council and Kier shall each pay Mr R £500 in respect of the serious distress and inconvenience caused.

Complaint summary

2. Mr R's complaint is that:-
 - The Council and Kier changed the date from which his ill-health pension became payable.
 - A flowchart produced by Kier to assist members with the Scheme's ill-health benefits payment process was misleading.
 - Kier wrote to him at his former home, even though he had previously notified a change of address.
 - This poor service has caused him financial detriment as well as distress and inconvenience.

Background information, including submissions from the parties

3. Extract from Teesside Pension Fund – Scheme Employers Guide to Ill Health of August 2015 (**the Employer's Guide to Ill-Health**):

"Scheme members who left the Scheme on or after 1 April 2014:

Regulation 38 of the Scheme Regulations details the requirements for the payment of deferred benefits on ill-health grounds. If a deferred member becomes permanently incapable of discharging efficiently the duties of employment which gave rise to their deferred benefits they may ask to receive

payment of their retirement benefits immediately...Benefits are payable from any date when the member applies for the early payment of benefit..."

4. In September 2013, the Local Government Association (**LGA**), which provides support to local councils, sent a circular to the Council regarding substantial changes to the Scheme that were planned to be implemented in 2014.
5. In Spring 2014, members including Mr R were sent a newsletter (**the 2014 Newsletter**) providing details of a restructure of the Scheme that was planned for that year.
6. On 1 April 2014, a new set of Regulations (**the 2013 Regulations**), which includes Regulation 38, were implemented to govern the Scheme.
7. On 31 May 2015, Mr R left employment with the Council and became a deferred member of the Scheme. The section of the Scheme of which Mr R is a member is managed by the Teesside Pension Fund.
8. In August 2015, annual benefit statements were sent to members that included information about the implementation of the 2013 Regulations.
9. On 9 March 2016, Mr R contacted Kier, the administrator for Teesside Pension Fund, to claim an ill-health pension.
10. On 31 March 2016, the Council, the administering authority, contacted Mr R to confirm it had received his ill-health retirement claim from Kier and to request further information from him, which Mr R provided on the same day.
11. On 18 April 2016, Mr R had an appointment with the Scheme's independent registered medical practitioner (**the IRMP**).
12. On 19 April 2016, the Council received notification from the IRMP that Mr R was incapable of full-time employment, and that his incapacity had started on 31 May 2015.
13. On 21 April 2016, the Council informed Mr R that his ill health pension application had been accepted, and that his pension payments would be backdated to 31 May 2015.
14. The Council submitted Mr R's retirement claim forms to Kier, which replied that the benefits could not be paid from 31 May 2015, because Mr R was still an active member on that date. So, Mr R's ill-health pension award date was amended to 1 June 2015.
15. On 29 April 2016, Kier sent Mr R an ill-health retirement quotation for benefits payable from 1 June 2015 including:-

Option A – Standard benefits
Pension £11,264.49pa
Lump sum £19,303.55

Option B – Maximum lump sum

Pension £8,275.58pa

Lump sum £55,170.47

16. On 5 May 2016, Mr R emailed the Council to ask whether its process was as set out in a flowchart (**the Flowchart**) provided online by Kier for Teesside Pension Fund. It stated that if the permanent incapacity existed at the date membership ceased and it was discoverable at the time, payment of the ill-health benefits should be backdated to when the incapacity had started.
17. On 1 June 2016, Kier informed the Council that there was no provision under the current Scheme Regulations to backdate Mr R's deferred benefits beyond the date of his pension claim on 9 March 2016.
18. On 2 June 2016, the Council replied to Mr R's email of 5 May 2016 and said:-
 - Following a review of his ill-health pension claim, a further error had been identified regarding the date from which his benefits were awarded.
 - As he left service after 1 April 2014 and became a deferred member on 1 June 2015 the current Scheme Regulations state that the benefits should be paid from the date on which he applied for an ill-health pension.
 - Mr R's backdated pension payment date had been amended again to 9 March 2016, because that is the date his claim for ill-health benefits was received.
19. On 14 June 2016, Kier sent Mr R a further retirement quotation for benefits payable from 9 March 2016. The amounts quoted were the same figures as previously provided on 29 April 2016.
20. On 26 July 2016, Kier received Mr R's signed pension application form in which he claimed Option B for an annual pension of £8,275.58 plus a lump sum of £55,170.47.
21. On 6 October 2016, Mr R complained to the Council about the service he had received.
22. On 20 October 2016, Kier received a complaint from Mr R under stage one of the Scheme's internal dispute resolution procedure (**IDRP**). In summary Mr R said:-
 - Having been informed that his ill-health pension would be backdated firstly to 31 May 2015 and then 1 June 2015, he had made financial commitments on the basis of that information.
 - To be subsequently told, on 2 June 2016, that the benefits would in fact be payable from 9 March 2016 was unacceptable. This had caused a financial loss by having to claim a larger lump sum and a lower pension than originally planned.
 - He understands that the Scheme Regulations dictate the benefits payable, but allowance should be made for the poor service he had received.

23. On 15 November 2016, the Council wrote to Mr R in response to his complaint of 6 October 2016 and said:-
- The service provided to Mr R had been unsatisfactory.
 - The Flowchart was misleading as it did not provide the current guidance on the payment date of benefits.
 - An award of £250 in settlement of Mr R's complaint was appropriate.
24. On 5 May 2017, Kier received an email from Mr R notifying it of a change of address.
25. On 8 May 2017, Mr R made a complaint to Kier under stage two of the IDRP.
26. On 5 July 2017, Kier found that stage one of the IDRP had not been completed and informed Mr R accordingly. Kier also shared this information with the Council on 6 July 2017.
27. On 8 August 2017, the Council wrote to Mr R, at his previous address, in response to his complaint under stage one of the IDRP and said:-
- A correct decision had been made regarding the award date of his ill-health retirement benefits.
 - The Council does not have discretion to award him benefits earlier than his application date of 9 March 2016.
 - The Council and Kier had both made errors by saying that his benefits would be paid initially from 31 May 2015 and then from 1 June 2015.
 - An offer of £250 in settlement of his complaint was appropriate.
28. On 10 August 2017, Mr R emailed Kier to take his complaint to stage two of the IDRP. Mr R also said he would like to review his decision to commute part of his pension for a larger lump sum than he had originally planned.
29. On 15 September 2017, Kier wrote to Mr R, at his previous address, and said:-
- The Council had correctly applied Scheme Regulation 38, and payment of Mr R's ill-health benefits was only available from the date on which he applied for the benefits, 9 March 2016.
 - Mr R had incorrectly been informed that his ill-health benefits would be backdated to 31 March 2015 and 1 June 2015.
 - Mr R's claim of financial loss resulting from that poor service was not accepted, because commutation of a member's pension for a larger lump sum was found by the Scheme actuary to be a cost neutral transaction.
 - Mr R had been awarded his correct benefit entitlement under the Scheme Regulations.

- Mr R was provided with correct figures in response to his application for ill-health benefits. So, the Council was not required to allow Mr R to review his decision to commute part of his pension for a lump sum.
 - The Council's award of £250 was sufficient recognition of the distress and inconvenience caused to him.
30. On 3 October 2017, Mr R emailed Kier to ask for an update on his IDRPs stage two complaint. In response Kier said that the final decision letter had been posted to Mr R on 15 September 2017.
31. On 12 October 2017, Mr R emailed Kier to say that he had not received that letter and asked Kier to check the address it was sent to.
32. On the same day, Kier emailed Mr R and said that his IDRPs stage two response letter had been sent to his previous address. Kier subsequently posted a further copy to Mr R's current address.

Mr R's position

33. Mr R said:-
- In April 2016, the Council incorrectly informed him that his ill-health pension would be backdated to 31 May 2015.
 - Kier subsequently said that the payments would be made with effect from 1 June 2015. Consequently, he had committed to purchasing an automatic car and moving to a house more suited to his medical condition.
 - On 2 June 2016, the Council had unreasonably informed him that his benefits would in fact only be backdated to 9 March 2016. Consequently, he was forced to claim a larger lump sum than originally planned in order to cover his financial commitments.
 - He had no other option than to claim the benefits he selected in the pension application that Kier received on 26 July 2016. So, he would like to be allowed to review that choice and claim a lower lump sum.
 - The Flowchart provided incorrect guidance on the process followed by the Council in determining the payment date of his pension.
 - His IDRPs stage two final response letter was sent to his previous home by Kier, despite the fact that he had previously notified it of his change of address.
 - These issues have caused him financial detriment as well as distress and inconvenience that has not been fully recognised in the Council's award of £250.

Kier's position

34. Kier said:-

- During the period in which Mr R's ill-health pension application was being processed, the Flowchart provided guidance for members who had left the Scheme before 1 April 2014. That guidance should have been amended when the Scheme's 2013 regulations were implemented, but no amendment was made at that time.
- Mr R's IDRPs stage one complaint was received in October 2016, and he quoted his previous address at that time. When documentation is received from a member it is scanned onto their record and a task is created for it to be processed.
- When a change of address is processed, the normal procedure is to check for any open tasks to see if the amendment could have an impact on them. As Mr R's change of address notification was received after the initial IDRPs stage one task had been completed, there appeared to be no outstanding actions required.
- The Council sent the IDRPs stage one response letter to Mr R at his previous address on 8 August 2017. As Mr R confirmed receipt of that letter but did not mention it had been sent to his previous address, the IDRPs stage two response letter was also sent to that address.
- Those details would not have been updated before the IDRPs stage one response letter was sent if Mr R had not informed the Council of his change of address.
- Kier posted Mr R's original IDRPs stage two final decision letter in September 2017. A copy was also posted to Mr R's current address in October 2017, following an enquiry he made, because Kier was unaware that the original letter had been sent to Mr R's former address.
- Mr R's ill-health pension application was not processed to the expected standards. But Mr R was in receipt of correct information about his benefits before he decided to commute part of his pension for a lump sum.

The Council's position

35. The Council said:-

- Mr R was incorrectly informed regarding the payment date of his ill-health pension.
- That error was identified when Mr R contacted the Council on 5 May 2016 to ask whether, or not, the process followed by the Council was the same as shown in the Flowchart.

- On review of Mr R's application for an ill-health pension, it was noted that there had been another error in processing Mr R's claim, and Mr R was informed of this in a letter dated 2 June 2016.
- According to the Scheme Regulations, pension benefits are payable to a member who left on or after 1 April 2014, from the date the member applied for early payment of their pension, or if later from the date permanent incapacity is judged to have arisen.
- Mr R left employment on 31 May 2015 and submitted an ill-health pension application on 9 March 2016, which was the earliest date from which his pension could be paid.
- Mr R has not incurred a financial loss by commuting a larger part of his pension for a lump sum than planned, because it was a cost neutral transaction, as calculated by the Scheme's actuary.
- Mr R was provided with the correct figures when he applied for his ill-health benefits. Consequently, there was no provision under the Scheme Regulations for Mr R to review his decision to commute a larger part of his pension for a lump sum than he had originally planned.
- The Council's rejected offer of £250 to Mr R was appropriate recognition of the distress and inconvenience he has experienced.

Adjudicator's Opinion

36. Mr R's complaint was considered by one of our Adjudicators who concluded that there had been maladministration by the Council and Kier. The Adjudicator's findings are summarised below:-
- The Council incorrectly informed Mr R on 21 April 2016 that he would receive his ill-health pension backdated to 31 May 2015, when his permanent incapacity had started.
 - Then on 29 April 2016, Kier incorrectly sent Mr R an ill-health retirement quotation for benefits payable from 1 June 2015, despite the fact that the current Scheme Regulations stipulate the benefits should be backdated to the application date, which in Mr R's case was 9 March 2016.
 - Kier had acknowledged that the Flowchart incorrectly showed that Mr R's ill-health benefits should be backdated to the point at which his permanent incapacity had started.
 - The Adjudicator formed the opinion that in these instances the provision of misinformation by the Council and Kier amounted to maladministration.

- As maladministration had occurred, the normal course of action would be, as far as possible, to put Mr R back in the position he would have been in, had the errors not occurred. However, in order for Mr R's complaint to succeed he would need to have reasonably relied on the misinformation and having done so, to have suffered financial detriment.
- It was not until 26 July 2016 that Kier received Mr R's completed ill-health pension application form in which he had claimed a lump sum of £55,170.47. By then Mr R was aware that he would not receive his pension backdated to either 31 May 2015 or 1 June 2015, having received the Council's letter of 2 June 2016. So, Mr R could have contacted Kier before sending his pension application form if he had required a smaller lump sum.
- Consequently, the Adjudicator took the view that it was unreasonable for Mr R to instead rely on the misinformation provided by the Council and Kier in April 2016, or that contained in the Flowchart.
- The Council had correctly concluded that Mr R could not now revise his decision about commuting a larger part of his pension for a greater lump sum. Further, the Scheme's actuary had confirmed that commutation of a member's pension for a lump sum is a cost neutral transaction. So, Mr R had not incurred a financial loss by commuting a larger part of his pension for a lump sum than he had originally planned to. He has received the correct amount but in a different format to that which we would like.
- Kier received Mr R's change of address notification on 5 May 2017, but the required actions were not taken and so the letters were sent to the incorrect address.
- The Adjudicator considered that Mr R could reasonably have expected Kier to process amendments to his personal details efficiently and would not have expected to have to contact Kier or the Council in order to have his IDRPs response letters sent to the correct address.
- It was not until after Mr R had twice chased for these letters, in October 2017, that Kier identified its errors. So, Kier's failure in that regard amounted to maladministration which resulted in Mr R's IDRPs stage two response letter also being sent to the wrong address.
- Further, the Council and Kier's previously identified maladministration, raised Mr R's expectations that he would receive his ill-health pension backdated to around 1 June 2015. Consequently, on 2 June 2016, when the Council informed Mr R that his benefits would only be backdated to 9 March 2016, would have caused a loss of expectation. These issues would also have caused Mr R significant distress and inconvenience that had not been fully recognised in the Council's award of £250.

- The Adjudicator formed the opinion that Mr R's complaint should be partly upheld and that the Council and Kier should jointly pay Mr R a total of £500 in recognition of the significant distress and inconvenience caused.

37. Although the Council and Kier accepted the Adjudicator's Opinion, Mr R did not and the complaint was passed to me to consider. I have noted the additional points raised by Mr R, Kier and the Council and I agree with the Adjudicator's Opinion except in respect of the level of award for the distress and inconvenience which Mr R has suffered which I find to be serious.

Mr R's additional comments

38. After initially receiving confirmation from the Council on 21 April 2016 that his pension would be backdated to 31 May 2015, he subsequently committed to the purchase of a house and a car on the basis of further correspondence received from the Council and Kier, as well as the pension payment details contained in the Flowchart.
39. The Council and Kier were not aware of Regulation 38 at the time of the incorrect pension award. Otherwise, they would not have initially changed the date on which his pension became payable from 31 May 2015 to 1 June 2015.
40. Neither the Council nor Kier gave any indication that this information was incorrect until he received the Council's letter of 2 June 2016. So, it was reasonable for him to rely on the information previously provided by the Council and Kier.
41. In telephone conversations with Kier during this period, he had received reassurance that his pension award could not be reduced. So, he should also have been warned that it would not be possible to review his pension award on the basis of financial loss if any benefits had already been paid.
42. He is not a pensions expert, so he would not have been aware of Regulation 38 at the time of committing to purchase a house and car.
43. Due to the errors made by the Council and Kier, he had no other option other than to select the retirement option he chose in July 2016.
44. He would like his benefits amended to reflect his position, had the Council and Kier not made any errors in dealing with his ill-health pension claim.
45. He suffered a data protection breach as a result of Kier not processing his change of address efficiently. This resulted in his stage two IDRPs response letter, which contained sensitive information, being sent to the wrong address.
46. During stage two of the IDRPs he was not given the opportunity to comment on information that the Council relied on in reaching its conclusions.
47. An award of £500 is insufficient recognition of the distress and inconvenience he has experienced. The Council had already offered £250 but since then there have been

further examples of poor service relating to the IDR. So, the Council should increase its offer and the total award should be in excess of £500.

Additional information provided by Kier

48. There are no records of any telephone conversations with Mr R after 21 April 2016, when the Council incorrectly confirmed that his pension would be backdated to 31 May 2015.
49. It is correct that Mr R's benefits entitlement was not reduced as a result of the payment date of his pension being changed from 31 May 2015 or 1 June 2015 to 9 March 2016. However, the amount of pension arrears that were due as a result of the later payment date was less.
50. The pension application form that was sent to Mr R on 29 April 2016, with a payment date of 1 June 2015, and the amended form sent to him on 14 June 2016, with a payment date of 9 March 2016, quoted the same retirement benefits. However, the value of the pension arrears was not quoted in either set of forms.
51. There was no change to Regulation 38, it was introduced under the 2013 Regulations that were implemented to cover the Scheme with effect from 1 April 2014.
52. The main consultation process relating to the 2013 Regulations commenced on 21 December 2012 and a second started on 27 March 2013.
53. Due to that consultation process, Kier was previously aware for some time that the 2013 Regulations were planned to be implemented. However, it was not possible to state the exact date that the provisions of Regulation 38 became known, as it formed part of the Scheme restructuring.
54. During the implementation of the 2013 Regulations, the Scheme literature and procedures were updated. But the Flowchart was not amended to reflect the new 2013 Regulations.
55. The Spring 2014 Newsletter informed members of the changes resulting from implementation of the 2013 Regulations and encouraged them to review the Scheme's new 2014 website in order to view all the amendments.
56. The annual benefit statements sent during August 2015, again reminded members of the changes under the 2013 Regulations and they were referred to the Scheme's new 2014 website for further information.

The Council's additional comments

57. The date on which the provisions of Regulation 38 became known is unclear. However, the LGA sent circulars in 2013 relating to implementation of the 2013 Regulations.

Ombudsman's decision

58. Mr R complained that he committed to purchasing a house and a car on the basis of incorrect information that was provided by the Council and Kier.
59. Mr R contends that he received no indication that there had been any error made for several weeks. He says he then telephoned Kier and was reassured that his pension could not be reduced. So, it was reasonable for him to rely on the benefit information that the Council and Kier had originally provided.
60. The Council and Kier have acknowledged that there were errors in their communications with Mr R on 21 April 2016 and 29 April 2016, and also in the Flowchart which indicated that Mr R's pension payment date would be around the end of May 2015. I find that this was maladministration by the Council and Kier. I note however that in its letter of 2 June 2016, the Council correctly informed Mr R that under current Scheme Regulations the correct pension payment date was 9 March 2016.
61. Kier has no record of any telephone conversations with Mr R during the period between him receiving the initial misinformation, and Kier's letter of 2 June 2016, or of providing reassurance that his benefits would not be reduced as Mr R suggests. But, in any event, it is clear that the actual benefits being paid to Mr R have not been reduced. The annual amount of pension is the same regardless of the payment commencement date. Mr R's perceived loss is the amount of arrears he thought he would receive had the payments been backdated to the end of May 2015.
62. The pension application form sent to Mr R on 29 April 2016 and the amended version, sent on 14 June 2016, both quoted the same annual pension but no figures for arrears were quoted in either of the forms. Consequently, I find that Mr R cannot reasonably claim that he relied to his detriment in the expectation of receiving arrears backdated to the end of May 2015.
63. Mr R submits that due to the errors made by the Council and Kier he had no other option other than to select the maximum lump sum with a lower pension in July 2016. However, Mr R already knew that his pension would not be backdated to the end of May 2015 at the point he sent his completed pension application form to Kier in July 2016. So, Mr R could clearly have claimed a lower lump sum if that had been his intention. I am not persuaded that Mr R had no other choice than to claim the retirement option that he chose in July 2016.
64. Mr R has said that Kier should have informed him that it would not be possible to review the options he chose once the benefits had come into payment. The purpose of providing retirement quotations is to allow the individual the opportunity to select options to suit their circumstances before the benefits are put into payment. Pension regulations do not allow the options to change once the benefits have begun to be paid. I see no reason why the Council or Kier should have specifically informed Mr R that his option could not be changed. Kier and the Council have correctly concluded that Mr R cannot now change his options to receive his benefits in a different format

65. Mr R contends that the Council and Kier must have been unaware of Regulation 38 at the time they told him his pension would commence from 31 May 2015. While I agree that there was clearly some misunderstanding of the Regulations, as evidenced by the communications sent to Mr R in April 2016, that does not change the fact that the Council and Kier are required to act in accordance with the Scheme Regulations which is what they have now done.
66. Mr R submits that he suffered a data protection breach as a result of Kier not processing his change of address efficiently. He said that this resulted in his stage two IDRPs response letter, which contained sensitive information, initially being sent to the wrong address. Kier has acknowledged that its normal process, which ensures that letters are sent to the correct address, failed in Mr R's case. It is not within my remit to consider whether, or not, this constituted a data protection breach. My role is to consider whether there has been maladministration. I find the failure to properly update Mr R's change of address, which caused a delay in Mr R receiving his IDRPs stage two response letter, amounts to maladministration on the part of Kier.
67. Mr R also said that during stage two of the IDRPs he was not given the opportunity to comment on information that the Council relied on in reaching its conclusions. I consider that it would have been appropriate for Mr R to raise any concerns he had about the IDRPs process at the time in October 2017.
68. Mr R considers that an award of £500 is insufficient recognition of the distress and inconvenience he suffered. He said that since the Council offered an award of £250 there had been further examples of poor service relating to the IDRPs. Given the number of errors made, I find that the maladministration identified would have caused Mr R serious distress and inconvenience and an award of £1,000 is appropriate in the circumstances.
69. I partly uphold Mr R's complaint.

Directions

70. Within 28 days the Council and Kier shall each pay Mr R £500 in recognition of the serious distress and inconvenience caused.

Anthony Arter

Pensions Ombudsman
11 June 2021