

## Ombudsman's Determination

<b>Applicant</b>	Mr Philip Sherratt
<b>Scheme</b>	Local Government Pension Scheme
<b>Respondent(s)</b>	Cheshire West and Chester Council

### Complaint Summary

Mr Sherratt complains against Cheshire West & Chester Council, the Administering Authority, because they supplied him with incorrect pension statements, which he relied on in order to take early retirement.

### Summary of the Ombudsman's Determination and reasons

The complaint should be upheld against Cheshire West & Chester Council because they raised Mr Sherratt's expectations by providing an incorrect statement.

## DETAILED DETERMINATION

### Material Facts

1. Mr Sherratt joined Cheshire East Council on 1 June 2009, as Head of Environmental Services. Cheshire West & Chester Council (**the Council**) was the administering authority.
2. In mid-2011 Cheshire East Council proposed to reduce the number of senior managers. The post of Head of Environmental Services was to be removed. Mr Sherratt says that as he was the only member of the management team who was over 55 years old and in a position to receive a pension should he agree to leave Cheshire East Council for reasons of redundancy or efficiency.
3. Mr Sherratt began to consider his options. He enquired about AVCs in August 2011, so that he could pay some of the possible redundancy payment into the AVC arrangement in order to reduce the potential tax liability.
4. Mr Sherratt says that on 5 September 2011, Cheshire East Council offered him redundancy and early retirement, rather than a position within the new management structure. Cheshire East Council presented figures for redundancy and asked the Council for a pension statement.
5. The Council produced a pension statement, which was given to Mr Sherratt on 5 September. The last day of service used by the Council, at the request of Cheshire East Council, was 31 December 2011. Cheshire East Council wanted to make sure that Mr Sherratt was presented with precise figures before reaching a considered decision.
6. The pension statement showed a pension of £28,987.67 with a lump sum of £50,542.65. Mr Sherratt had the opportunity to increase the lump sum to £142,283.73 with a reduced pension of £21,342.58.
7. Mr Sherratt says that in the evening of the day he received the pension statement, he discussed the options with his wife. He carried out some “back of envelope” calculations and decided that if he maximised the pension lump sum payment and carried out part-time consultancy work, he would be able to “get by”. Mr Sherratt wanted to gradually draw down the lump sum payment to supplement the monthly pension and would stop the drawdown once he reached state pension age. Further the consultancy work would bring in income which would support his lifestyle. Based on this calculation, Mr Sherratt agreed to proceed with the redundancy and apply for early retirement.
8. On 19 September 2011, Cheshire East Council published the new management structure. This structure had removed the position Mr Sherratt held, but created new positions, some of which were ring fenced. The positions for Head of Streets and Open Spaces and Head of Highways and Transport remained unfilled. Mr Sherratt

says that he would have been able to fill either of the positions had he decided not to accept early retirement and redundancy.

9. Cheshire East Council's Chief Executive wrote to Mr Sherratt on 30 September 2011, making a formal offer of early retirement and redundancy, subject to a compromise agreement being signed by both parties.
10. The Council say that Mr Sherratt received his annual statement on 3 October 2011, which gave an annual pension of £20,572.02 with a lump sum of £49,230.80 as at 31 March 2011.
11. Mr Sherratt says that he spoke to a former colleague who informed him that Cheshire East Council had discretion to increase his pension service by 6 years and 243 days. On 6 October 2011, Mr Sherratt asked the Council by email to confirm whether 6 years 243 days would be payable, he wrote:

"I have received a redundancy retirement estimate to support my voluntary redundancy from CEC [Cheshire East Council] on 31 December 2011.

**The Annual Pension Payable - £28,987.67**

I understand that this includes a discretionary additional contribution by **CEC to provide 6.66 added years** to my service. However, whilst I can see the effect in terms of Pension Payable, there is no reference to these added years. Could you please confirm the situation."

12. The Council replied on 7 October, saying:

"The redundancy estimates you have received do not include any added years from your Employer.

It is your Employers [sic] current policy to give the member the option to augment their pension by using the enhanced part of their redundancy payment. No added years are given to members who leave on redundancy."

13. On the same day Mr Sherratt asked whether the council could, "please confirm that the **Annual Pension Payable = £28,987.67 is correct?**" The Council replied on 10 October saying that, "With a leave date of 31/12/11 & a pensionable pay of £83240.00 your estimates [sic] pension is £28987.67." Mr Sherratt replied on the same day saying, "Sorry for checking, just wanted to be sure."
14. Mr Sherratt accepted voluntary redundancy and early retirement on 10 October 2011 and a draft compromise agreement was sent to him (this agreement was signed on 21 December 2011). On 18 October, Cheshire East Council announced by email sent to staff that Mr Sherratt would be leaving them. The email said:

"Phil Sherratt, the current Head of Environmental Services has decided to leave the organisation under the Council's Early Retirement Scheme and will leave the Authority at the end of December 2011, until then, he will continue to

lead on Highways, Fleet, Streetscape and Bereavement Services and Waste and Recycling...”

15. Mr Sherratt arranged an AVC with Clerical Medical on 8 November 2011, to take advantage of the tax relief from his redundancy payment and paid contributions of £3,400 for November and December 2011.
16. The Council sent Mr Sherratt his retirement pack on 30 December 2011. It stated a pension of £28,987.67 with a lump sum of £50,542.65, with an option to increase the lump sum to £144,712.85 with a reduced pension of £21,706.94.
17. Mr Sherratt’s employment ended on 31 December 2011.
18. Mr Sherratt’s left Cheshire East Council on 31 December 2011 and he received in total £38,313.12 in redundancy. Mr Sherratt returned his completed pension forms on 30 December 2011, opting to take the maximum cash lump payment.
19. On 25 January 2012, the Council contacted Mr Sherratt and informed him that they had given him incorrect pension figures. The pension quoted in the revised statement was, £22,054.80 with a lump sum of £57,341.14. The lump sum could be increased to £114,999.55 (including the £6,798.49 AVC) with a reduced pension of £17,249.93. They said:

“Unfortunately the estimate supplied was incorrect. The error occurred because part of your transferred in service was counted towards both your pre April 2008 (80ths) and post April 2008 service (60ths), this is incorrect. The transferred in service should have only counted towards your post April 2008 service (60ths).”
20. Mr Sherratt accepted the pension quoted and the pension was paid by the Council on 29 February 2012. Mr Sherratt took the option of a reduced pension of £17,249.93 with part of the pension used to increase the lump sum payment to £108,201.06 (this figures excludes the AVC payment).
21. Mr Sherratt complained to Cheshire East Council, who replied on 16 April 2012, saying that they had referred the matter to the Council, as the complaint was against them not Cheshire East Council.
22. Mr Sherratt started the internal dispute resolution (**IDR**) procedure, saying that he made decisions on taking redundancy and early retirement based on the figures supplied by the Council.
23. On 21 September 2012, the stage 1 decision letter was issued by the nominated person. In summary, the nominated person said:
  - The Council accepted that the incorrect pension figures were supplied to Mr Sherratt because of a software error. They added that Mr Sherratt had received annual benefit statements which were accurate, and he had received one on 3

October 2011, which should have alerted him that the pension figures supplied by the Council earlier was incorrect.

- The software error distorted the monthly pension but did not affect the lump sum figures. Mr Sherratt decided to convert £4,808.87 of his annual pension to increase his lump sum by £57,658.44. The Council said that based on the correct annual benefit statement received on 3 October 2011, the correct lump sum and reduced pension had been paid.
- The Council considered whether Mr Sherratt relied to his detriment on the pension figures. They noted that there was a financial saving to be made by Cheshire East Council in making Mr Sherratt redundant and that Mr Sherratt could not supply a copy of the calculations he had made and how much income he needed to maintain his outgoings.
- The Council pointed out that Mr Sherratt had reduced his annual pension to £17,249 in order to take a larger lump sum payment. They said that by taking this step Mr Sherratt had established that he was prepared to accept a reduced annual income and he would have done so after considering what his outgoings were.
- The Council said that after being notified of the correct pension figure Mr Sherratt did not try to contact Cheshire East Council to discuss a strategy to mitigate his losses and did not seek alternative employments.
- They accepted that any correct annual statements issued near the time he left service, would not have allowed Mr Sherratt to reverse the decision to accept voluntary redundancy.

24. Mr Sherratt appealed the decision and the matter was considered under the stage 2 IDR procedure, by the Council. On 7 March 2013, the Council issued their stage 2 decision. They said:

- The management changes within Cheshire East Council, together with his age, had made it possible for Mr Sherratt to retire early. Those factors most likely had contributed to his decision to accept voluntary redundancy.
- The decision to accept redundancy was further motivated by the enhanced redundancy payment offered by Cheshire East Council.
- The initial explanation given by the Council, as to why they produced incorrect statements, was wrong. The Council in the stage 2 decision explained that the non-LGPS service was accounted for twice, and this was only noticed before payment was made. They said:

“It is this previous non-LGPS membership, when attached to earlier LGPS membership, which CPF’s [the Council] operational software system did not correctly account for. The 8 years 274 should have

provided Mr Sherratt with a pension of  $(1/80 \times 8 \text{ years } 274 \text{ days} \times £83,240 \text{ (pay)})$  and a lump sum of  $(3/80 \times 8 \text{ years } 274 \text{ days} \times £83,240)$ . It did this step correctly but, unfortunately, it took the same service and threw it back into the calculator. It calculated  $1/60 \times 8 \text{ years } 274 \text{ days} \times £83,240 = £12,140$  and added the result into the final pension figure. This inflated the pension estimate but there was no incorrect inflation of the lump sum.”

- The Council’s view was that had Mr Sherratt compared the pension quote he received with the annual benefit statement issued in October, he ought to have realised that there was a difference, which needed to be questioned.
  - They said that Mr Sherratt had contacted the Council on 6 October 2011, three days after the annual benefit statement was issued on 3 October, asking whether the pension figure of “£28,987.67” was correct. The Council confirmed it was. They said that Mr Sherratt should have brought the figures quoted on the annual benefit statements to the attention of the Council on 6 October.
  - The Council concluded that the incorrect pension figures did not confer an entitlement. They added that Mr Sherratt had an opportunity to mitigate any losses had he sought clarification after the annual benefit statement was issued on 3 October.
  - The Council said they had not seen any evidence that Mr Sherratt carried out any consultancy work or other part time work which would have mitigated his losses.
25. In response Mr Sherratt said that he relied on the pension figures, rather than the annual statement he received, because he trusted the figures supplied by the Council. The pension figures were overstated by the Council and they should bear responsibility for the losses he had and would continue to suffer. The loss in this instance is the loss of earnings as he accepted redundancy rather than stay on in one of the new positions announced by Cheshire East Council.
26. Cheshire East Council were asked by this Service to clarify the events leading to Mr Sherratt’s redundancy, they said the following:
- When an individual is displaced due to a restructure and wishes to accept voluntary redundancy, it is usually supported, as it avoids compulsory redundancy at a later date. But if an individual accepts voluntary redundancy then he is no longer considered for alternative positions.
  - In this case, Mr Sherratt’s position was being outsourced to a third party. Cheshire East Council undertook a consultation that ran from August 2011 to September 2011. Mr Sherratt expressed an interest to take redundancy from end of August 2011, before the consultation process completed. Any offer of redundancy was also conditional on a compromise agreement being signed.

- Cheshire East Council said that had Mr Sherratt not accepted redundancy then there may have been positions that he could have taken. But as he had accepted redundancy, he did not apply for any of these positions nor was he considered by Cheshire East Council. Most of the positions that could have been deemed suitable for Mr Sherratt were filled by Cheshire East Council in October 2011.
- After Mr Sherratt retired and was told that the pension was different from what he had expected, he did not contact Cheshire East Council.

### **Summary of Mr Sherratt's position**

27. The Council have not considered the impact the incorrect information had on him and his family. There was no attempt by the Council to establish his circumstances leading up to accepting voluntary redundancy when they considered his complaint.
28. Mr Sherratt says that the thoughts behind the "back of the envelope" calculations were as follows:
  - He assumed he will die at 80 and will have essential outgoings of £36,000.
  - He will receive his state pension at 66.
  - He will earn 2% interest on the lump sum payment.
  - He assumed his consultancy work may produce no income.
  - So he assessed how long he could maintain his outgoings without having to draw down the lump sum payment. He wanted to keep the lump sum payment intact until he reached state retirement age.
  - The redundancy payment will be used to pay off the debts and cost of setting up the consultancy business.
29. Had he decided to remain with Cheshire East Council, he would have been offered a position. He does not believe that because of his age, they would have denied him a new position. Positions within the Council remained unfilled even after he was made redundant.
30. When the pension figures were supplied to him in September 2011, the Council did not realise they were incorrect. He disagrees with the Council's suggestion that he continued with the redundancy plans knowing that the pension figures were incorrect.
31. Mr Sherratt says that he did not apply for the new positions within Cheshire East Council, as he was told by the Director of Places that as he could retire early, he might want to consider this rather than apply for the new posts.

32. Mr Sherratt says that he has no recollection of receiving annual benefit statements that drastically differed from the pension figures supplied. Had he received the figures he would have questioned them immediately.
33. Had he been given accurate pension figures, he would have rejected the possibility of retirement and remained employed with Cheshire East Council. This means he could have earned between £531,000 and £652,000 up to 65. He is claiming this loss of income together with the shortfall between the pension he was initially quoted and the pension that was paid.
34. Mr Sherratt says that he suffered “severe disappointment” and distress because of the whole situation.
35. In response to Cheshire East Council’s comments, Mr Sherratt says that:
  - The people who he dealt with had left Cheshire East Council in 2012, so the response from the writer is from a person who was never involved in the redundancy process.
  - Mr Sherratt says that he was told that he could accept redundancy or another position would be found for him.
  - He says that had he been given accurate pension statement he would have declined redundancy and he would have been offered a position.
  - He would have considered a TUPE across to the company to whom his role was outsourced, in order to protect his employment rights rather than accept redundancy.
36. Mr Sherratt’s additional comments are that; he did not receive the annual statement in October 2011, therefore, he was unable to carry out a comparison between the pension figures.
37. Mr Sherratt wanted an annual income of £36,000 in order maintain his day to day living costs, this figure includes the incorrect pension, drawing down the lump sum and the consultancy work he was planning. If he could not achieve this figure he would not have accepted redundancy. The incorrect statement reassured him that he would be able to achieve this income.
38. Mr Sherratt was working as a consultant for Cheshire East Council after he left because they needed his assistance whilst they conducted an internal investigation. Mr Sherratt did not complain as the very people he was investigating were the ones who would consider his complaint. So this was the reason why he did not pursue Cheshire East Council.
39. Mr Sherratt says that the Cheshire East Council’s policy is not to re-employ people who have been made redundant.



40. He says that if he did not accept redundancy and there was no position available he would have been able to TUPE across to the new company and his position secured until his retirement.

**Summary of the Council's position**

41. The Council say that there is no evidence that Mr Sherratt could have continued to be employed by Cheshire East Council. They rely on an email received from Cheshire East Council on 22 June 2012, in which Cheshire East Council told the Council that:

“In the summer of 2011 a corporate management restructure was undertaken across the Council. Ahead of the design of the structure(s), invitations were made to all management and staff to express an interest in voluntary redundancy.

Mr Sherratt subsequently expressed his interest in Voluntary Redundancy to the Head of HR and OD. As a result the post he occupied was deleted from the management structure when the services were redesigned and therefore the post-holder was not replaced.

No discussions took place regarding the non-acceptance of the VER/compromise agreement. The Council was never in a position to consider alternative redeployment opportunities or management structures.”

42. They say that Mr Sherratt has not supplied evidence of the consultancy work he carried out after he was made redundant. He did not show to the Council the contracts he was awarded or how he advertised his consultancy in order to get work so that he could mitigate his losses.
43. Mr Sherratt did not challenge the annual statement he received in October 2011. He has said that he relied on incorrect pension figures, whereas someone of his position, a senior manager, should have challenged the differences in pensions when lump sums were similar.
44. The Council say that Mr Sherratt had indicated his willingness to consider redundancy before the pension figures were supplied. Therefore it would be inequitable to assume that if the correct pension figures had been supplied from the outset then Mr Sherratt would not have accepted redundancy.
45. Without clear indication from Cheshire East Council that a role was available for Mr Sherratt after the restructuring, Mr Sherratt cannot argue loss of earnings until 65 years old.
46. The Council's comments on what Cheshire East Council have said are:
- There was no guarantee that Mr Sherratt would have successfully been appointed to any other positions as other candidates would have also applied for them.

- Mr Sherratt's early indication of his intention to accept redundancy may have allowed Cheshire East Council to fill the relevant positions with other candidates.
- Mr Sherratt was aware of the disparity between the annual statement and the pension statement he was given before he signed the compromise agreement, so therefore he did have an opportunity to refuse redundancy and ask to be considered for an alternative position.

## **Conclusions**

### **Could Mr Sherratt rescind his resignation?**

47. Cheshire East Council told the Council that once Mr Sherratt had decided to accept the redundancy there was no scope for him to rescind this decision. A point acknowledged by Mr Sherratt, in that he accepts that the Council did not re-employ those who were made redundant. Cheshire East Council have said, "No discussions took place regarding the non-acceptance of the VER/compromise agreement. The Council was never in a position to consider alternative redeployment opportunities or management structures."
48. Cheshire East Council had also said that his position was "deleted". However, since this Service asked Cheshire East Council for further information, they have confirmed that as Mr Sherratt accepted redundancy they did not consider him for alternative positions before he left employment. Had he refused to accept the terms of redundancy then he would have had to apply for the available positions and he may have met the criteria to take another position. However two further points need to be considered, firstly, all alternative positions appear to have been filled by October 2011, and secondly, after Mr Sherratt left employment he did not contact Cheshire East Council asking for his resignation to be rescinded.
49. Mr Sherratt says that he could not contact Cheshire East Council, because in his role as a consultant he was investigating their management. However, it is my view that this should not have prevented him from registering a complaint and asking for his position to be reinstated- had he felt sufficiently strongly about the matter. The fact that he did not complain was based on his own judgment.
50. It would be reasonable to assume that Mr Sherratt would have been aware that all alternative positions were filled in October 2011, before he left and his former role was outsourced, therefore, it would have been unlikely that he would have been able to rescind his resignation when he discovered that his pension was less than expected.

**Detrimental reliance**

51. Whilst Mr Sherratt relied on the incorrect statement to reach the decision to retire early, it is not clear whether he did so to his detriment. East Cheshire Council had decided on a change to the management structure. After Mr Sherratt accepted redundancy the management structure was changed with positions being filled.
52. Mr Sherratt says that before he accepted redundancy and early retirement, he carried out “back off the envelope calculations”. The purpose of which was to ascertain how long Mr Sherratt could maintain the pension lump sum by gradually drawing it down. He says that he needed at least £36,000 per year and if he could not achieve this he would not have accepted redundancy.
53. Mr Sherratt has not stated how he would have maintained his outgoings with the early retirement figure initially quoted by the Council. Indeed, Mr Sherratt has not explained how the lower pension he accepted has left a shortfall in meeting his outgoings.
54. I accept that it is likely that Mr Sherratt, relied on the incorrect statement, however, I am not persuaded that he did so to his detriment. He would have been aware that due to the management structure changing his own position would have been under threat so accepting redundancy with the pension quoted may have been his only option.
55. Mr Sherratt says that had he declined the opportunity to retire early, East Cheshire Council would have found a position for him. There is an element of truth in what Mr Sherratt says. Cheshire East Council have said that had he not volunteered for redundancy, they would have considered him for one of the positions available. But Mr Sherratt would have needed to apply for those positions and it is not guaranteed that he would have been successful. Also, there is no evidence to show that he was interested in applying for one of the vacant positions.
56. Mr Sherratt refers to TUPE and that had he remained he would have been outsourced. It is my view that this is based on the benefit of hindsight. If such an option existed, and Mr Sherratt could continue to receive his salary rather than accept redundancy, I do not understand why he did not pursue this option. His salary was significantly higher than the pension he was quoted. He could have maintained his earnings until his retirement.
57. With this in mind, Mr Sherratt was left with two options, one to reapply for a management job that he was not certain to get, or apply for early retirement, which East Cheshire Council had indicated they would support.
58. The incorrect September statement acted only to reassure Mr Sherratt that the decision to retire early would be one he could make, because of the pension lump sum figure quoted.

59. The Council have said that because Mr Sherratt received an annual statement in October 2011, that he should have been aware that the statement given to him earlier was incorrect. Mr Sherratt says that he has no recollection of receiving a statement in October that caused him alarm. But Mr Sherratt did contact the Council three days after the October statement was issued and asked them to confirm that the incorrect pension figure quoted was correct. He said, "please confirm that the Annual Pension Payable = £28,987.67 is correct." It could have been coincidental that Mr Sherratt contacted the Council to confirm the pension figure, or Mr Sherratt did receive the annual statement and wanted to make sure that the higher pension would be paid to him. Mr Sherratt should have contacted the Council and expressly said that he had received an annual statement that quoted an annual pension that differed significantly from the earlier quote. If he had done so Mr Sherratt would still have had time to renegotiate his redundancy with East Cheshire Council.
60. Further, Mr Sherratt asked whether the incorrect statement included added years, which the Council said it did not. The significance of asking this question was that Mr Sherratt may have realised that the figures on the incorrect statement were higher than the annual statement and initially wanted to enquire whether the reason for the higher figures was because added years had been included.
61. Mr Sherratt has said that he relied on the incorrect statement when he accepted voluntary redundancy, although, as set out above, in October, some three months earlier, it appears that Mr Sherratt was alerted to the possibility that the pension figures quoted in September 2011, were questionable. Further, had he raised doubts about the annual statement in October, he may have still been able to change his mind and apply for one of the available positions, as they were still available at that time.
62. Mr Sherratt claims that had the correct figures been given from the outset he would have declined the redundancy offer as he would still had a role with Cheshire East Council. This is based on his own assumption, whereas Cheshire East Council have said that Mr Sherratt would needed to have applied for the vacant position and there was no guarantee whether he would have been successful. Therefore, it follows that as there was no certainty of a new position, Mr Sherratt cannot claim loss of future earnings as compensation.
63. However, the Council should compensate Mr Sherratt for the distress and inconvenience he has suffered in realising that the September statement was incorrect and repeating the incorrect figures in the retirement pack he received in December. Mr Sherratt has suffered a loss of expectation and as such I will direct the Council to pay £750 as compensation for the distress and inconvenience he has suffered.

**PO-4232**

**Directions**

64. Within 21 days the Council will pay Mr Sherratt £750 in compensation for the distress and inconvenience they have caused him.

**Anthony Arter**

Pensions Ombudsman  
31 July 2015