

Ombudsman's Determination

Applicant	Miss Paula Marshall
Scheme	Local Government Pension Scheme
Respondent	Barnsley Metropolitan Borough Council

Complaint summary

Miss Marshall has complained that Barnsley have refused her request to allow the late transfer of the pension benefits from previous employments.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld because Barnsley did not take proper account of all relevant factors in deciding whether to extend the period for transfer.

Detailed Determination

Material facts

1. Regulation 83 of the Local Government Pension Scheme (Administration) Regulations 2008 says, in paragraph (8) that notices requesting transfers in to the Scheme must be made by a member “before the expiry of the period of 12 months beginning with the date he became an active member (or such longer period as his employer may allow)”.
2. Miss Marshall worked in a civilian post for West Yorkshire Police from 30 August 2001 to 14 June 2002. She then worked as a constable for West Yorkshire Police from 17 June 2002 to 25 January 2005. She accrued pension in both posts.
3. Miss Marshall was employed by Wakefield Metropolitan Borough Council from 26 January 2005 to 20 February 2009. She then started employment at Barnsley on 23 February 2009 and her membership of the Scheme in that employment began immediately.
4. Barnsley did not tell the South Yorkshire Pensions Authority (the administering authority of the relevant section of the Scheme) that Miss Marshall had joined until 21 January 2010. South Yorkshire Pensions Authority would ordinarily have sent a “welcome pack” on being notified of a new joiner. There is a copy of a letter dated 27 January 2010 sending one to Miss Marshall. Miss Marshall says she does not recall receiving it.
5. In mid-2012 Miss Marshall attended a session relating to pensions presented by a Ms H which she says led her to begin thinking about her pensions. She later met Ms H to discuss the matter. Ms H told her that a transfer should have been completed within 12 months and that she should have received the welcome pack telling her this. Miss Marshall says that Ms H left the room to see whether a welcome pack had been sent and returned, saying that it hadn't. Miss Marshall also says that Ms H told her that she had not completed a nomination form for death benefits which would have been included in the pack. She adds that she certainly would have done that, if the pack had been received.
6. As a result, Miss Marshall emailed her HR department on 13 September 2012 and asked if she could transfer her deferred benefits. She said she had been informed that the transfer should have happened within the first 12 months of when she rejoined but she said she could not remember reading this information anywhere. The HR department responded on the same day and said they would find out if she could transfer but added that they did not see any reason why it would be agreed that she could transfer as it was after twelve months since she rejoined.

7. Barnsley wrote to Miss Marshall on 9 October 2012 and said they were unable to approve her late transfer request. They said this was because she had not provided any extenuating circumstance as to why her request was being made after the twelve month cut off.
8. Miss Marshall took her complaint through the internal dispute resolution procedure. Barnsley repeated that there was no extenuating circumstance. Miss Marshall appealed to South Yorkshire Pensions Authority who said that Barnsley had not taken into account that the welcome pack was sent 11 months late and remitted the matter to them. Barnsley reconsidered the matter but did not exercise discretion in her favour. They now added that there was no reason that Miss Marshall could not have applied to transfer within a reasonable period of receiving the welcome pack.

Conclusions

9. This is a very simple case which turns on the welcome pack. Barnsley say that it was sent and so Miss Marshall should have followed it up within a reasonable period, even if outside the 12 months. Miss Marshall says she did not receive it at all.
10. Ordinarily I would say that if a letter was posted to the correct address it is more likely than not that it was received. I find that to be so in this case. The fact that Miss Marshall did not complete the nomination form is not strong evidence that the pack was not sent, merely that she did not receive it, or did but did not act on it. It is, of course possible that it was not sent, since something had plainly gone wrong with the joining process.
11. I have taken account of the fact that it was purportedly sent 11 months after Miss Marshall joined Barnsley. In my view its impact would have been dramatically reduced by the delay - if it was indeed sent and received. At a time when new arrangements were being made on starting employment it would not be surprising to receive a pack of papers that required attention. Miss Marshall would not have been expecting to receive important pension material so long afterwards.
12. In addition to that there is an element of doubt as to whether it was sent at all, given the late notification by Barnsley.
13. Barnsley has discretion to extend the period for notice to be given. That should be exercised reasonably, taking everything relevant into account (and nothing irrelevant). Their first decision was, as South Yorkshire Pensions Authority noted, faulty. They took no account of – or even said that they knew about – the 11 month delay, which was their fault. Their reconsideration was, in my judgment, influenced by their first refusal. It did not take proper account of the consequence of delay, but merely tacked a

statement on to the first decision - that Miss Marshall had not applied within a reasonable time after the pack was sent.

14. I have considered whether I should remit the decision to Barnsley to reconsider it. But Barnsley have already had two opportunities and I do not think justice to Miss Marshall would be served by having to go round the process again.

Directions

15. I direct that Barnsley are to agree to Miss Marshall transferring into the Scheme, if she wishes to do so and as long as she makes all reasonable endeavours to progress the matter in the usual way immediately on receiving my final Determination.

Tony King

Pensions Ombudsman
11 March 2015