

Ombudsman's Determination

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| Applicant | Mrs Yvette Conroy |
| Scheme | Local Government Pension Scheme (LGPS) |
| Respondent(s) | Northumbria Police Service |

Complaint Summary

Mrs Conroy has complained that Northumbria Police Service, her previous employer, refused to allow her to take her deferred pension early. She also complains that they delayed in dealing with her case.

Summary of the Ombudsman's Determination and reasons

The complaint should be partly upheld against Northumbria Police Service to the extent that they delayed in dealing with her case and she should be compensated for the resultant distress and inconvenience she suffered.

Detailed Determination

Material facts

1. The LGPS is a statutory scheme which for administrative purposes is split into various regions. Mrs Conroy was a member of the Tyne and Wear Pension Fund.
2. Mrs Conroy was employed by Northumbria Police Service between 5 March 1991 and June 2001, the date she left service. She was a member of the LGPS during this period and became a deferred member of the LGPS from June 2001.
3. Mrs Conroy applied to Northumbria Police Service for the early release of her deferred pension on 22 March 2013, she was aged 53.
4. Northumbria Police Service wrote to Mrs Conroy on 1 May 2013, saying that they were unable to support her application because of the financial strain it would have on the Tyne & Wear Pension Fund.
5. Mrs Conroy appealed Northumbria Police Service's decision not to grant the early payment of her deferred pension under both stages of the LGPS' Internal Disputes Resolution Procedure, (IDRP). She initially wrote to Northumbria Police Service on 25 May 2013, under stage one of the IDRP and received their stage one response on 5 August 2013. She subsequently formally appealed to Northumbria Police Service on 27 November 2013, under stage two of the IDRP. Northumbria Police Service provided their stage two response to her on 13 January 2014, in which the writer of the letter said,

“ I ...do not consider that Northumbria Police has revisited the matter correctly as per the instructions of the Appointed Person, and I also refer the matter back to Northumbria Police once more for them to review their policy so that it provides for applications from member who can claim benefits from age 50. They should then use that policy to exercise their discretion properly and reasonably.”

6. Northumbria Police Service wrote to Mrs Conroy on 27 June 2014, saying,

“We are in receipt of the advice provided to the organisation at stage1 and stage 2 of the ... (IDRP) following the decision taken not to support your application based on the financial strain it would place on the organisation.

Work has been ongoing to review our internal procedures to bring them in line with advice provided in relation to exercising discretionary powers under Regulation 31.... In addition changes brought about by the introduction of the new Local Government Pension Scheme Regulations 2014, which became effective on the 1 April 2014, further delayed this work, however, these reviews are now in the final stages of completion.

We will shortly be in a position to reconsider your application subject to an amended and compliant procedure.

I appreciate there have been delays in reaching a position where your application can be reconsidered and apologise for any inconvenience that this may have caused you.”

7. Northumbria Police Service wrote to Mrs Conroy again on 8 August 2014, saying,

“Your case was referred back to Northumbria Police with advice for a discretionary statement to be formulated and a review of internal force procedures to be carried out.

Northumbria Police have acknowledged the advice received which has lead to the formulation of a statement reflecting how our discretionary powers will be exercised and a review of a range of internal procedures in line with the Local Government Pension Scheme.

We have now reconsidered your original application letter dated 22 March 2013, in line with revised force procedures. Unfortunately, our decision remains the same, in that we are not able to support your application on the basis the financial strain your application places on the force budgets is too great, if your circumstances have changed and you have compassionate grounds you would like to be considered please provide these in writing.

...accessing deferred pension benefits before minimum retirement age (55 years old) is classed as an unauthorised payment and incurs income tax charges that are payable by you and sanction charges which are payable by Northumbria Police.

Northumbria Police would be liable to a sanction charge of 15-40% for consenting to an unauthorised payment and would also be liable to cover the cost for the additional years your pension would be paid out.

Therefore, we have taken the decision not to support your application in recognition of the financial burden that access to your deferred pension would incur on your benefits, and on the budgets of Northumbria Police I hope this further explains the reason for our decision.

However, when you reach the age of 55 years a further application would be considered subject to the level of financial strain this places on Northumbria Police...”

8. Mrs Conroy reached age 55 on 27 January 2015, and has made a fresh application to Northumbria Police Service to receive her deferred pension.

9. In a letter to this service dated 18 March 2015, from Northumbria Police Service they say that they accept that there was a period of 5 months delay between their undertaking a reconsideration of her case as stated in the stage two IDRPs response letter of 13 January 2014. However, they say that the reason for the delay was because of the requirement to revise the local procedure and take account of the the new LGPS regulations which came into effect on 1 April 2014.

LGPS Provisions

10. Local Government Pension Scheme Regulations 1997 (the Regulations).

“31.-(1) If a member leaves a local government employment (or is treated for these regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 50 ... more he may elect to receive payment of them immediately.

(2) An election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority.

(5) A member's appropriate employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced...

Statements of policy concerning exercise of discretionary functions

106.-(1) Each administering authority and Scheme employer must formulate and keep under review their policy concerning the exercise of their functions under regulation 31 (early leavers) ...

(2) Before formulating that policy an administering authority must consult the authorities who employ active members for whom they are the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the commencement date-

(a) each Scheme employer shall send each relevant administering authority, and

(b) each administering authority shall send each relevant Scheme employer,

A written statement as to the policy which is being applied by that employer or, as the case may be, authority in the exercise of its functions on or after that date and each employer or authority shall publish that statement.

(4) Where, as a result of a review under paragraph (1), a Scheme employer or administering authority determine to amend their policy, they must send a copy of the statement of the amended policy to each relevant administering

authority or, as the case may be, relevant Scheme employer before the expiry of the period of one month beginning with the date on which they so determine.”

Conclusions

11. Mrs Conroy contends that the reason Northumbria Police Service gave for declining her request for the early release of her deferred pension was because of the financial strain it would cause. However, they have not produced any evidence to support this.
12. Regulation 31.1 provides that a member may elect to receive his deferred pension from age 50. Regulation 31.2 says that the consent of the former employing authority is required. Therefore, Mrs Conroy did not have an automatic entitlement to the early release of her deferred pension as it was at the discretion of Northumbria Police Service .
13. I would not interfere with Northumbria Police Service's discretionary powers under the Regulations unless I found that they had not properly considered Mrs Conroy's particular circumstances. When Northumbria Police Service exercise their discretion they have to follow certain well established principles. They must apply the relevant Regulations correctly, take account of all relevant evidence and the decision reached must not be perverse, that is to say the decision is one which no reasonable decision maker could have reached. It is evident that Northumbria Police Service considered Mrs Conroy's personal circumstances; I note that they gave her an opportunity to submit evidence to support a consideration of her application on compassionate grounds. They also took account of wider factors such as the cost implications to them and the financial impact on the Tyne and Wear Pension Fund. I therefore find that Northumbria Police Service has exercised their discretion appropriately and that their decision not to grant Mrs Conroy the early release of her deferred pension was reasonable.
14. Further, I note that in their letter to Mrs Conroy of 8 August 2014, Northumbria Police Service referred to the impact the tax liability of between 15-40% and the additional years pension would have on their budget. I think that the explanation given was sufficient.
15. A scheme's IDRP must ensure that decisions are reached, and notified to applicants, within a "reasonable period". The Pensions Regulator provides that the relevant decision-maker will be expected to determine disputes within four calendar months of receiving the application. The four-month period applies separately to each determination stage. As Northumbria Police Service had responded to Mrs Conroy's stage one and stage two IDRP appeals within the legislative timescale I do not find that they had unduly delayed in considering her complaint under the IDRP.
16. Mrs Conroy states that Northumbria Police Service had no policy in place in relation to a member leaving the LGPS prior to 5 April 2006, who had attained age 50. This delayed her case being considered under the IDRP. She says there were also further

delays by Northumbria Police Service in sending her information in connection with her case.

17. However, I note from Northumbria Police Service's letters to Mrs Conroy of 27 June and 8 August 2014, that they acknowledged they did not have suitable procedures in place or a correct policy on exercising their discretionary powers in relation to Regulation 31, and that this had delayed proper consideration of her case.
18. They also say, in their letter to this service of 18 March 2015, that they delayed by 5 months reconsidering Mrs Conroy's case because they had to revise their procedures and take into account the new LGPS regulations. Section 106 (3) of the Regulations says that an employer shall provide a published statement concerning the policy which is being applied in the exercise of its functions within three months of the commencement date. In addition, section 106 (4) says that where as part of a review an employer amends their policy, they must provide a copy of the statement of the amended policy to the relevant administrative authority within one month beginning with the date on which they so determine.
19. It is clear from the stage two IDRPs response letter of 13 January 2014, to Mrs Conroy, that Northumbria Police Service did not have an appropriate policy for members who can claim benefits from age 50. At the time of their letter to Mrs Conroy of 27 June 2014, Northumbria Police Service said that their policy review was not yet finalised. So Northumbria Police Service had breached the three month deadline to produce the required written policy statement and the one month time stipulation as prescribed under section 106 (4).
20. It is my view that Northumbria Police Service's delay, caused by their failure to have an appropriate policy and procedures in place, was maladministration by them. This would have caused Mrs Conroy some distress and inconvenience and she should receive a modest amount of compensation to reflect this.

Directions

21. I direct that within 28 days of this determination Northumbria Police Service shall pay Mrs Conroy £200 for the distress and inconvenience caused to her by their maladministration as identified above.

Anthony Arter

Pensions Ombudsman
30 June 2015