

Ombudsman's Determination

Applicant	Mr E
Scheme	Local Government Pension Scheme (LGPS)
Respondents	Nottinghamshire County Council (the Council)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by the Council.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E has complained that the pension estimates provided by the Council did not make it clear that the late retirement enhancement percentages could change.

Background information, including submissions from the parties

4. In 2013, Mr E referred a complaint to this Service about the late retirement enhancement percentages which were revised with effect from 14 February 2012. The complaint was concluded on the basis that the Council had correctly applied the new enhancement rates to all of Mr E's service after age 65, in accordance with the guidance set by the Government Actuary's Department (**GAD**).
5. The final determination said the following which forms the basis of Mr E's current complaint.

"There is an entirely separate question as to whether [Mr E] ought to have been told that earlier estimates were subject to change, particularly in relation to the enhancement percentages. That, though is not the complaint he has made and, if he did make such a complaint he would need to say that he would have behaved differently if he had known that they might change."
6. Mr E then raised this question as a new complaint. The Council considered the complaint through the internal dispute resolution procedure (**IDRP**). In summary, the Council did not uphold the complaint and made the following comments:

- Mr E was aware that the pension estimates could alter. The June 2011 estimate was clear that it was subject to confirmation on retirement and it should have been clear to him that the figures were subject to change.
 - Mr E says that he was “constantly requesting pension estimates to monitor the value progress.” He knew, therefore, that the estimates could change and there was never any suggestion that the change could be unfavourable.
 - The Council had no warning of the change to the GAD guidance and there was no possibility of informing him in advance. Mr E was notified of the change on 27 April 2012, which was within three months of the change taking place.
7. Mr E did not agree with the Council and referred his complaint to this Service. In summary, he said:
- The Council did not warn him specifically that the late retirement enhancement part of the estimate could alter unfavourably from the rest of the figures.
 - The Council knew that certain parts of pension enhancements would be affected by the Government changing the measure for inflation for public sector pension schemes from RPI to CPI in October 2011.
 - He wanted to retire earlier but due to the changes he had to work until the age of 72.

Adjudicator’s Opinion

8. Mr E’s complaint was considered by one of our Adjudicators. He did not uphold the complaint and his findings are summarised below:
- Mr E ought reasonably to have known that his actual pension benefits on retirement might change. The estimate of pension benefits issued to Mr E on 1 June 2011 said, “All information is provided for estimate purposes only and would require confirmation upon retirement.”
 - Even if the Council could have specified in the estimates that the enhancement rate may go up or down, the mere possibility that the enhancement rate may change would not reasonably have made Mr E alter his retirement plans. After all, the enhancement rate could also have been increased in his favour.
 - By working until the age of 72, Mr E has received an annual income from his employer and accrued additional pensionable service that would have benefited from the late retirement enhancement.
 - The Council was not in a position to predict how or if the enhancement rate would change in future. The Council could not have known this until the GAD guidance was issued in February 2012.

- Even if the Council were aware of the change from RPI to CPI in October 2011, it would have been inappropriate and premature for it to make any announcements about the impact on the enhancement rate before GAD had completed its review.
9. Mr E did not accept the Adjudicator's Opinion and provided additional information about some of the expenses he incurred whilst continuing to work until the age of 72. The Council did not make any further comments.
 10. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

11. This determination is limited to the question of whether Mr E was told that the enhancement rates were subject to change and what he would have done differently if he had known that they might change.
12. The issues previously raised by Mr E, regarding how the enhancement rates were applied to his pension benefits, have already been determined by my predecessor. That determination is final and legally binding on both parties. Therefore, I cannot change the conclusions reached by the Ombudsman on that complaint.
13. Turning to Mr E's current complaint, the pension estimates issued by the Council clearly state that the figures would require confirmation upon retirement. So I am satisfied that Mr E would reasonably have known that his actual pension entitlement might change on retirement.
14. Even if the pension estimates had clearly explained that the enhancement rate may go up or down, on balance, I do not consider that this would have altered Mr E's decision on when to retire. This is because Mr E and the Council could not have known at the time of the estimate if, when and by how much the enhancement rate will be reduced in the future. Therefore, I do not consider it reasonable for a member to retire early merely on the basis that the enhancement rate for late retirement might fluctuate.
15. It is for GAD, and not the Council, to set the enhancement rates for late retirement. Therefore, the Council could not reasonably have informed members about the new enhancement rates until GAD had issued its guidance on the matter.
16. Therefore, I do not uphold Mr E's complaint.

Anthony Arter
Pensions Ombudsman

24 June 2016