

Ombudsman's Determination

Applicant	Mrs M
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Nottinghamshire County Council (the Council)

Outcome

1. I do not uphold Mrs M'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. Mrs M has complained that the Council incorrectly decided not to refund her employee contributions when she left the LGPS. She also contends that the Council failed to provide her with adequate information about LGPS in order to make an informed decision on whether or not joining it would be in her best interests. In order to put matters right, she would like the Council to refund all her contributions into the LGPS.

Background information, including submissions from the parties

4. In May 2010 Mrs M commenced working at one of the Council's primary schools on a casual basis as a care assistant.
5. She received a letter in July 2010 from the Council which informed her that she had been enrolled into the LGPS and begun making employee contributions into it. The Council also said in their letter that:-
 - she would shortly receive a statutory notification confirming her membership of the LGPS;
 - if she did not wish to remain a member of the LGPS, she should inform the Council by completing and returning the enclosed form;

PO-8102

- the Council would then ensure that she paid no further pension contributions and calculate either the amount of her contributions to be refunded or her deferred pension depending if she had less or more than three months' LGPS membership; and
 - she should contact them if she had any queries about the contents of the letter or the form
6. Mrs M initially chose to opt out of the LGPS. But after managing to secure a short fixed term contract, she informed the Council in October 2010 that she had changed her mind and wished to remain a member of the LGPS.
 7. Mrs M has worked at several of the Council's schools and in different sections within them on a short term supply basis (with the exception of one contracted role) up to October 2013. For each of her six posts, she has separate membership in the LGPS. Her total contributions into the LGPS was £926.12.
 8. For her contracted role which ended in August 2012, Mrs M had accrued more than three month's pensionable service and was therefore entitled to a deferred pension.
 9. The Council sent her a letter in January 2013 to inform her that she would receive a pension of £147.52 pa from the LGPS on attaining her 65th birthday in November 2027.
 10. Mrs M says that:
 - the deferred pensions available to her from the LGPS for each of her posts are too small to support her financially in retirement;
 - if the Council had informed her from the outset that multiple employments (some at the same school) would result in separate membership of LGPS for each role, she would not have joined and paid contributions into it;
 - she thought that her contributions into the LGPS would be allocated to "one pot" and not "separate pots" for each role to provide benefits on retirement;
 - when she telephoned the Council in October 2010 to inform them that she wished to remain a member of the LGPS, they did not correct her misconception that her contributions would all be allocated to "one pot";
 - she did not receive written contracts of employment providing information about the LGPS for any of the posts which she held;
 - if the Council had told her that the LGPS was a final salary pension scheme, she would not have joined because it was inappropriate in her circumstances, i.e. working on an irregular casual basis for short periods on low wages and without a written contract;

- the Council failed to provide her with adequate clear pensions information and guidance in order to make an informed choice on whether or not joining the LGPS would be suitable for her financial needs; and
- the Council originally told her when the LGPS Regulations were amended, she was now entitled to receive a refund of her contributions because she had less than two years' pensionable service in LGPS

Adjudicator's Opinion

11. Mrs M's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised briefly below:-

- The Council was obliged under the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655) (**the Disclosure Regulations**), to provide basic information about the LGPS as a matter of course automatically to Mrs M within two months of her becoming a member. The Disclosure Regulations do not specify what form that information should take but the Council had to include a written statement that further details about the LGPS was available and give an address to which any enquiries should be sent.
- The Council's letter, sent to Mrs M in July 2010, fulfilled the Disclosure Regulations because it gave basic information about the LGPS and the Council's contact details if she wanted to know more about the scheme before deciding whether or not she wished to remain a member of it.
- Mrs M's attention had therefore been drawn to the fact that further information about the LGPS had been available to her on request. It had consequently been open to her to research the LGPS in more detail, should she have wished to do so, by seeking independent financial advice, if necessary, and defer her decision to remain a member of the LGPS until she was completely satisfied that it was the correct option for her.
- The Court of Appeal held in *Outram v Academy Plastics Ltd* [2000] IRLR 499, that there is no general or contractual duty in law to provide information or advice to prevent economic loss and that absence of duty extends to advice on pension scheme membership. However, where advice is given voluntarily, it must be done competently. The duty of care on an employer is to take reasonable care in making any statements it chooses to make and not provide any inaccurate, negligent or misleading information. The Council has done this in Mrs M's case.
- The Council must act in accordance the Local Government Pension Scheme Regulations 2013 (as amended) (**the LGPS Regulations**), in order to determine the benefits available to Mrs M from the LGPS.

- The LGPS Regulations state that:

- a) members can opt out of the LGPS if they wished on their individual employments or on all their employments and if they did this within three months of starting employment, then they would be treated as not having joined and any contributions deducted would be returned;
- b) the qualification period for a deferred pension in the LGPS was three months until 1 April 2014 when it was increased to two years; and
- c) no contributions refunds are permitted where a deferred benefit is already held unless a member opts out within three months of starting a new employment whereby he/she is treated as if he/she had not been pensionable in that employment.

- As Mrs M is entitled to a deferred pension in the LGPS for one of her roles, and did not opt out of the LGPS for her other posts within three months of starting each new employment, the Council are unable to refund any of her contributions in accordance with LGPS Regulations.

12. Mrs M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs M provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs M for completeness.

Ombudsman's decision

13. Mrs M says that the Council should have corrected her flawed understanding of how the retirement benefits available to her from the LGPS were calculated, when she telephoned them in October 2010 to inform them that she wished to remain a member of the LGPS. She contends that if the Council had done this, she would not then have joined the LGPS. But apart from Mrs M's recollections of a telephone conversation which took place over six years ago, there is unfortunately no written evidence corroborating what she actually discussed with the Council during the call.

14. I have also seen no evidence to substantiate her assertion that the Council had mistakenly told her that she was entitled to a refund of all her contributions, as she had less than two years pensionable service following the amendments made to the LGPS Regulations.

15. What is clear to me from the available evidence is that the Council had:

- fully complied with the Disclosure Regulations by providing Mrs M with basic details about LGPS and, drawing to her attention, that further information was available on request, so that she could have researched the LGPS in more detail before deciding whether or not membership of the LGPS would be in her best interests; and
- acted in accordance with the LGPS Regulations (as amended) when declining her request for her pension contributions to be refunded.

PO-8102

16. Although I sympathise with Mrs M's circumstances, I do not therefore uphold Mrs M's complaint.

Anthony Arter

Pensions Ombudsman

9 March 2017