

## Ombudsman's Determination

Applicant	Mr S
Scheme	Local Government Pension Scheme ( <b>LGPS</b> )
Respondents	London Borough of Waltham Forest ( <b>LBWF</b> ) Capita

## Outcome

1. Mr S' complaint against LBWF is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, LBWF should pay Mr S compensation for the significant distress and inconvenience caused to him by its mishandling of his case.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr S is complaining that LBWF and Capita are refusing to provide him with a transfer value following his redundancy in October 2010 and are not allowing him to transfer his pension to another scheme. Mr S also says that LBWF have failed to communicate properly with him and this caused delays in obtaining information.

## Background information, including submissions from the parties

4. On 1 March 2010, Mr S joined LBWF and was made redundant on 20 October 2010.
5. Prior to October 2010 before he left service, Mr S was planning to transfer his pension benefits. On 9 August 2010, Mr S emailed Capita asking if a transfer could be completed before he was made redundant.
6. On 5 July 2011, Capita received confirmation that Mr S was entitled to the immediate release of his pension benefits and a leaver notification, dated 6 July 2011, confirmed that he had been made redundant.
7. Capita did not proceed with the transfer of Mr S' LGPS benefits because Mr S was made redundant and was over 55 years old so he was entitled to immediate payment of his LGPS pension.

8. On 17 July 2015, Mr S complained to Capita under the first stage of its Internal Dispute Resolution Procedure (**IDRP**). Mr S said that when he was made redundant on 20 October 2010 he was told that his LGPS pension had to go into payment. He further complained that his request to transfer his LGPS pension to the NHS Pension Scheme had been declined and he was told that he did not have a right to transfer his LGPS benefits.
9. On 22 September 2015, the IDRP stage one decision was sent by Capita. Capita did not uphold his complaint and said that, when Mr S emailed Capita on 9 August 2010, it had interpreted the content of the email to mean that he understood he would receive a pension on being made redundant.
10. Capita said that under Regulation 19 of the LGPS (Benefits, Contributions and Membership) Regulation 2007 (**the Regulations**, see appendix 1), a member who is 55 years old or older, becomes entitled to the immediate payment of their unreduced pension if they leave by reason of redundancy, and his pension would come into payment from the day immediately following his termination.
11. Mr S appealed this decision. He said that the Regulations Capita relied upon do not refer to compulsion. Mr S said that he does not wish to be a pensioner and therefore believes that Capita have an obligation to provide him with a transfer value.
12. LBWF failed to respond to Mr S' appeal and did not consider the matter at all under IDRP stage 2.
13. The matter was accepted by this Office on 16 June 2015, and a request for a formal response was sent to LBWF on 17 March 2017. LBWF has also failed to respond to this request, despite repeated assurances that a response was forthcoming.

## **Adjudicator's Opinion**

14. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by LBWF. The Adjudicator's findings are summarised briefly below:-
  - Mr S says that it was not mandatory for him to take his LGPS pension. However, Mr S left the LGPS under Regulation 19 with an entitlement to an immediate pension. Regulation 50 of the Regulations (see appendix 2), confirms that the pension is payable from the day after the date employment ceased and it does not provide for such a member to defer receipt of their pension. As such, LBWF and Capita are bound by the Regulations, which mean that the pension had to be put into payment and could not be transferred. There is no maladministration by Capita and LBWF with regard to this issue.

- LBWF failed to respond to the complaint under IDRP stage 2 and have failed to respond to the Adjudicator's request for information. This lack of regard for Mr S's complaint delayed the matter and caused him significant inconvenience and unnecessary additional stress.
  - The Adjudicator was of the opinion that this complaint should partially be upheld against LBWF because it delayed dealing with Mr S' case and has not provided him with the stage 2 IDRP decision, which may have resolved the matter without the need for Mr S to bring the case to this Office.
15. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr S for completeness.

### **Ombudsman's decision**

16. Mr S has said section 93 of the Pensions Schemes Act 1993 confirms that members with accrued rights have a statutory transfer right to transfer. However, as explained by the Adjudicator in the Opinion, Mr S has attained age 55 and is entitled to the immediate payment of his unreduced pension, so he cannot concurrently be entitled to a transfer of his LGPS benefits. I therefore find that LBWF has applied the relevant regulations correctly.
17. Given the extremely poor way in which the matter has been handled by LBWF, I agree with the Adjudicator that the award in respect of non-financial loss, due to the significant distress and inconvenience suffered by Mr S, should be £1,000.
18. Therefore, I partly uphold Mr S's complaint.

### **Directions**

19. Within 21 days of the date of this Determination LBWF should pay Mr S £1,000 for the significant distress and inconvenience caused to him by LBWF's lack of response to his complaint.

**Anthony Arter**

Pensions Ombudsman  
15 December 2017

## **Appendix 1**

### **The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007**

Early leavers: inefficiency and redundancy

19. — (1) Where—

- (a) a member is dismissed by reason of redundancy; or
  - (b) his employing authority has decided that, on the grounds of business efficiency, it is in their interest that he should leave their employment; and
  - (c) in either case, the member has attained the age of 55,
- he is entitled to immediate payment of retirement pension without reduction.

(2) In the case of a person who is a member on 31st March 2008, and to whom paragraph (1) applies before 31st March 2010, that paragraph applies as if "the age of 50" were substituted for "the age of 55".

## **Appendix 2**

### **The Local Government Pension Scheme (Administration) Regulations 2008**

**50.**—(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable begins with the day after the date on which his employment ends.

(2) In the case of a member who leaves local government employment and is not entitled to immediate payment of retirement pension under any of regulations 16 to 20 of the Benefits Regulations and does not make a choice under regulation 30 of those Regulations (choice of early payment of pension), the first period for which any retirement pension is payable begins, unless he asks by notice in writing to his administering authority to defer payment, with his 65th birthday (but any such deferral shall not extend beyond the day before his 75th birthday).