

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondent	West Midlands Pension Fund ( <b>the Fund</b> )

## Outcome

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

## Complaint summary

3. Mr Y has complained that the Fund did not fully explain how his benefit entitlement would be paid, leading him to believe that he had applied for a higher amount.

## Background information, including submissions from the parties

4. On 28 July 2008, Mr Y was sent a retirement quote in respect of benefits payable from 26 August 2008, at age 60. The options available were: an annual pension of £343.55 and a cash lump sum of £1030.70, or, an enhanced cash lump sum of £1840.46 and an annual pension of £276.07.
5. On 29 January 2010, Mr Y telephoned the Fund saying that he suffered from mental health problems, including depression, and had been unable to respond to the Fund's previous letters about applying for his benefits.
6. Mr Y was told that the new deadline to apply for the benefits payable to him in 2008 was 31 March 2010. If he were to respond after this, the Fund would need to reassess its decision on paying Mr Y's benefits in arrears from 26 August 2008 and consider whether payment should be made from the date of claim instead.
7. On 29 March 2010, Mr Y telephoned the Fund again saying that he was unsure of which retirement option to choose. He was provided with details for a national directory of independent financial advisers. Mr Y also raised concerns about how taking his pension benefits would affect his housing benefit, and the paperwork which would need to be completed because of this.

8. On 11 October 2013, Mr Y was sent a letter saying that his deferred retirement benefits were due to come into payment on 26 August 2013. This said that Mr Y was entitled to an annual pension of £393.07 and a lump sum of £1,199.62 should he opt for the standard benefits option. In respect of the other option available, which concerned the converted benefits package, Mr Y was entitled to a lump sum of £2,112.94 and an annual pension of £316.96.
9. On 8 November 2013, Mr Y spoke with a representative of the Fund and confirmed that he would like his benefits backdated to 2008.
10. On 14 November 2013, Mr Y was sent a benefit statement which quoted benefits at 60 for the same amounts as had been quoted in 2008.
11. On 14 February 2014, Mr Y completed the retirement option form sent to him by the Fund. He selected the converted benefits option and next to it, wrote:

“£316.96 annual pension and £2112.94 lump sum. Please arrange for Arrears and Interest due as agreed – from 26<sup>th</sup> August 2008. Thank you.”
12. On 28 February 2014, the Fund sent Mr Y a letter saying:

“Payment of your annual retirement pension of £276.07 will commence on 25 March 2014 and will include any arrears if applicable.

Payment of your lump-sum of £1914.90 will be made on 7 March 2014. This includes an amount of £53.91 gross lump sum interest and £20.53 in respect of gross pension interest for delayed payment.”
13. On 2 April 2014, Mr Y telephoned the Fund querying why there was a difference in the retirement quote letters he had received. He was advised that the Fund had honoured the original quote from 2008, which was lower, but that he had received five years’ worth of arrears.
14. On 9 May 2014, Mr Y wrote to the fund saying that he had received payment of his lump sum plus interest, but this appeared to be based on the figures quoted in 2008. He said that his benefits should have been paid as per the figures quoted in the fund’s letter of 11 October 2013.
15. On 21 May 2014, the Fund responded confirming that Mr Y’s pension had been backdated to 26 August 2008. It said the lump sum of £2,112.94 would only have been available if Mr Y had not backdated his pension benefits.
16. On 9 December 2014, Mr Y wrote to the Fund saying that his decision to take converted benefits was based solely upon the information in its letter of 11 October 2013 and advice given by the Fund. He said that he had cited these amounts in his application form, which had been accepted without question. He believed this agreement should be honoured and that a further payment of £272.48 was due to him.

17. On 25 July 2014, Mr Y complained to the Fund saying that his pension application had been mishandled. Specifically, he was erroneously told in a telephone call in November 2013 that the Fund's letter of October 2013 showing the higher pension amounts was correct, and that he should ignore the Fund's letter of 14 November 2013. He explained that he had cited the values from a 2013 quote in his retirement option form, but the Fund did not check this and challenge it at the time.
18. On 26 August 2015, the Fund sent Mr Y its stage one Internal Dispute Resolution Procedure (**IDRP**) response. This said that as Mr Y did not apply for his benefits at age 60, a revised benefit statement was sent to him for benefits payable at age 65. The Fund administrators then exercised discretion in allowing Mr Y to backdate his benefits with increases and interest. It said that arrears could not be paid if Mr Y opted for his benefits to come into payment on the basis calculated at age 65. The complaint was not upheld.
19. On 22 September 2015, Mr Y appealed this decision.
20. On 1 December 2015, the City of Wolverhampton Council (**the Council**) provided a stage two response under the IDRP. It said that the benefits which had been paid were considered to be the most financially beneficial to him. The complaint was not upheld at this stage either.
21. Mr Y subsequently referred his complaint to this Office for an independent review.
22. On 15 April 2015, the Fund provided its formal response. It acknowledged that Mr Y had selected an invalid option in his retirement application and said it should have returned the form to Mr Y at this point, with an explanation. Overall, it maintained that it had acted correctly.

## **Adjudicator's Opinion**

23. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Fund. The Adjudicator's findings are summarised briefly below:-
  - The Fund's administrators had exercised discretion in allowing for Mr Y's benefits to be payable from 26 August 2008.
  - Whilst Mr Y would like his benefits to be backdated and paid on the basis of the 11 October 2013 retirement quote, the Fund had not acted unreasonably in refusing to do this.
  - The benefits quoted to Mr Y in 2013 were slightly higher as they had remained in deferment for longer. Mr Y would be unjustly enriched if these benefits became payable from an earlier date.
  - Mr Y's entitlement would be to either backdate his benefits to 2008 on the basis it was payable at this time, or, receive the higher entitlement from 2013, without any backdating.

- In terms of Mr Y's entitlement in both 2008 and 2013, it had been calculated in accordance with the Scheme's rules.
- Although Mr Y's retirement option form should have been returned to him rather than processed, Mr Y had not suffered a financial loss because of the Fund's decision to backdate his benefits. The Fund administrators had applied the option which, for Mr Y, was most financially advantageous.
- Whilst the error would have caused Mr Y some confusion, this did not amount to significant, undue distress.
- Mr Y also said that he was misinformed on his correct benefit entitlement in November 2013. The call note on file does not support this.

24. The Fund accepted the Adjudicator's Opinion. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments, highlighting his continuing mental health problems and the distress caused by this matter, 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 Mr Y for completeness.

### **Ombudsman's decision**

25. The Fund has agreed to backdate Mr Y's benefits to 2008, and pay these on the basis of the July 2008 retirement quote.
26. I appreciate that Mr Y was quoted a higher pension and lump sum benefit in 2013, however, this was quoted on the basis that these benefits would come into payment in 2013. Mr Y is not entitled to these benefits at an earlier date.
27. I am satisfied that the Fund's administrators have administered Mr Y's benefits in accordance with the Scheme's rules.
28. Mr Y says the Fund should have returned his retirement option form, in which he cited values from the 2013 retirement quote, rather than process a payment for the amounts he was entitled to in 2008. I appreciate that the process could have been clearer, and understand Mr Y's surprise upon receiving a letter confirming the lower pension which would be paid. However, the Fund have essentially applied the most financially beneficial option to the payment of Mr Y's benefits. I do not find that Mr Y suffered a financial loss.
29. In terms of Mr Y's non-financial loss, I note that Mr Y queried the lower amounts in a telephone call to the Fund on 2 April 2014, in which it clarified that the original 2008 quote had been honoured, allowing it to pay five years of arrears. Therefore, Mr Y was made aware of the correct position as soon as he queried it. Although I am sympathetic to Mr Y's mental health problems, I am not persuaded that he was caused significant distress by the Fund putting these benefits into payment when it did.

**PO-9245**

30. Therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman

21 June 2017