

Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme (LGPS)
Respondent	North Tyneside Council (the Council)

Outcome

1. I do not uphold Mrs N'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 N, a deferred pensioner in the LGPS, complains that the Council incorrectly refused her request on compassionate grounds for an unreduced early retirement pension from the LGPS in September 2016.

Background information, including submissions from the parties

4. Mrs N was employed by the Council until she resigned in October 2015.
5. In November 2015, she applied for early payment of her deferred pension and requested that her health problems, mainly caused by stress and anxiety at work, to be taken into account by the Council when deciding whether or not to waive the actuarial reduction of £1,474 applicable to her pension of £4,033 pa.
6. Mrs N's LGPS pension commenced on 2 January 2016 on the understanding that she still intended to pursue payment of it on an unreduced basis.
7. The Council rejected her request in February 2016 after considering all the available evidence which included a report on the financial implications of releasing the pension on an unreduced basis and Mrs N's health problems. The Council said that there was no mutual interest for it to agree to her request because of the substantial cost involved, i.e. £30,295, in order to waive the actuarial reduction.
8. Mrs N appealed this decision unsuccessfully at Stage One of the LGPS Internal Dispute Resolution Procedure (**IDRP**).
9. In its letter dated 30 June 2016 to Mrs N, the Council said that:

“The Council is required to have a written statement in relation to the policy it exercises about waiving actuarial reductions. This is known as a discretion within the pension regulations. The Council’s discretions are set out in its Pension Policy document. The written statement about waiving actuarial reductions is:

“The Council notes this discretion and confirms it will not normally make use of this discretionary power.”

Your application was considered on 12 February 2016 by a panel...The report which was prepared for the panel is a standard pro-forma...The panel was asked to consider whether there were:

1. grounds to release the pension and if there were any financial implications for the Council

Guidance on this indicated that, unless the cost of the application was less than £1,000, the release of the pension would only be considered if in the mutual interests of the employer and deferred member.

2. any compassionate grounds

Guidance on this asked if the employee could demonstrate that they were unable to continue working or resume employment due to circumstances outside their control, for example, to look after/care for a dependent spouse.

3. any other relevant circumstances

There was no guidance about this.

In relation to your application, the costs for the Council of waiving the reduction in your benefits were detailed in the report, the statement, “none provided” was recorded for compassionate grounds and no other relevant circumstances were entered. The recommendation in the report was that the application be turned down because there were costs to the employer.”

10. Mrs N replied that she had been unaware that compassionate grounds could be considered as a reason for retirement and explained that her mother had Alzheimer’s disease and she was her registered carer.
11. The Council agreed to consider afresh Mrs N’s request that the actuarial reduction to her pension be waived. After taking into account all the available evidence including the new information concerning her health and caring responsibilities, the Council declined her application in September 2016 for essentially the same reason given for its original decision.

12. Mrs N also appealed the new decision, citing again her health problems and caring responsibilities. She also asserted that:
- she did not receive any support or guidance on her situation at work from the Council; and
 - she would not have agreed to transferring £32,673 from a private pension to the LGPS if she could have foreseen the circumstances which led to her eventual resignation and early retirement
13. Mrs N's new appeal was unsuccessful at both stages of the IDRP in October 2016, and in February 2017.

Adjudicator's Opinion

14. Mrs N'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:-
- Regulation 30 of the LGPS Regulations 2013 (relevant sections are shown in the Appendix below) provides for early payment of deferred pension benefits to Mrs N at an earlier age than 60 at the discretion of the Council. It then provides that the early retirement reduction may be waived on compassionate grounds.
 - Although the decision to grant early retirement is entirely a matter for the Council, they are required under the LGPS Regulations 2013 to formulate a policy concerning the exercise of this function. This policy for early payment was that it would only be allowed where it was in the Council's financial or operational interests.
 - The content of the policy is a matter for the Council and it is entirely within its power to set a policy that has regard to operational and financial matters. The Pensions Ombudsman cannot find fault if the Council had looked at the application within those narrow criteria because the potential cost to the Council was a relevant factor and it was entitled to have regard to its own interests.
 - The Council applied this discretionary policy in Mrs N's application fairly and in a reasonable manner that was consistent with the LGPS Regulations 2013. As a public body, it was important that the Council was able to justify its decisions on relevant financial, operational and compassionate considerations.
 - The Council has asked Mrs N the right questions about her health and personal circumstances before considering all the relevant factors in reaching its decision. The compassionate grounds put forward by Mrs N were weighed against the significant cost to the Council which would be incurred if they agreed to her request.

- It is possible that another employer might have come to a different decision but this does not mean that the Council's decision can be said to be perverse.
 - Mrs N's grievance that she did not receive adequate support from the Council at work relates to an employment issue with which the Pensions Ombudsman cannot become involved because it is outside of his jurisdiction. It should have been raised and dealt with appropriately at the time which, in any case, according to the Council's Stage One IDRPs decision letter dated 5 October 2016, is what had happened.
 - Whether or not to purchase additional pension in the LGPS was entirely Mrs N's decision. It had been open to her to explore the option in more detail after seeking appropriate independent financial advice, if necessary before deciding to proceed with the transfer of her pension rights from her previous pension arrangement to LGPS.
15. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her 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 Mrs N for completeness.

Ombudsman's decision

16. When considering how discretion has been exercised, I will generally look at whether:
- the correct questions have been asked;
 - the applicable scheme rules or regulations have been correctly interpreted;
 - all relevant but no irrelevant factors have been taken into account; and
 - the decision arrived at must not be perverse, i.e. a decision that no reasonable body would make.
17. In this context, a perverse decision is one which no other decision maker, properly directing itself, would come to in the same circumstances. However, the weight which is attached to any of the evidence is for the Council to decide including giving some of it little or no weight.
18. I will not generally interfere in the exercise of a discretion unless I consider the decision process was in some way flawed or the decision reached was one that no reasonable body faced with the same evidence would have taken.
19. If the decision making process is found to be flawed, the appropriate course of action is for the decision to be remitted for the Council to reconsider. I cannot overturn the decision made by the Council just because I might have acted differently.
20. It is my opinion, however, that the Council has acted in accordance with the above principles and within the powers given to it by the LGPS Regulations 2013 and also

followed the correct procedure when making its decision for Mrs N's early retirement application on compassionate grounds. Furthermore I consider that the Council has properly considered all the relevant information available at the time and the decision made was therefore within the bounds of reasonableness.

21. Although I sympathise with the unfortunate circumstances in which Mrs N now find herself, I do not consider that they are the result of any maladministration on the part of the Council.
22. Therefore, I do not uphold Mrs N's complaint.

Anthony Arter

Pensions Ombudsman
12 December 2017

Appendix

Relevant clauses from the LGPS Regulations 2013

30 Retirement benefits

(5) A member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance by the Secretary of State.

(8) A Scheme employer, former employer which is a Scheme employer, or, where a member's employer or former employer has ceased to be a Scheme employer, the appropriate administering authority, may agree to waive in whole or in part any reduction that would, apart from this paragraph, be required by paragraphs (5) or (6).

60 Statement of policy about discretionary functions

(1) A Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions under regulations

(c) 30(8) (waiving of actuarial reduction);

Council Policy

The Council's policy (**the Policy**) states as follows:

(v) The power for the scheme Employer to waive an actuarial reduction as follows:

Provision

- a) For active members voluntarily retiring on or after age 55 who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits and for deferred members and..., who were not members of the LGPS before 1 October 2006, whether to:
 - waive on compassionate grounds any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2014...,and/or
 - waive in whole or in part (on any grounds) any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014...

Further it states:

Policy

The Council notes this discretion and confirms that it will not normally make use of this discretionary power.

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Further guidance is also provided on the Report on application to waive the actuarial reduction on voluntary early retirement as follows:

“Under the 2014 scheme a member can release their pension early at a reduced rate without Council permission. This means that there are no costs to the Council. However, a member can, under the Council’s pension policy, make an application for the reduction to be waived on compassionate grounds...” and further “Please note the release of pension should only be approved if it is in the mutual interests of the employer and member.”