

## Ombudsman's Determination

Applicant	Mr E
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	Royal County of Berkshire Pension Fund ( <b>the RCBPF</b> ) and Slough Borough Council ( <b>the Council</b> ) (the Applicant and Respondents each a <b>Party</b> and together, the <b>Parties</b> ).

### Complaint assessment

1. The complaint was assessed by one of my caseworkers who considered it should not be upheld and no further action was required by the Respondents. My caseworker's assessment of the case, including all relevant background information and submissions received, is set out in their Decision Letter dated 29 October 2024 (the **Decision Letter**), which is enclosed with, and forms part of, the Determination.
2. The Applicant did not accept this view and the complaint was passed to me. I have carefully considered the complaint and reviewed the relevant documentation.

### Additional submissions

3. The Applicant did not make any additional submissions when he requested a further review of his complaint.
4. The Respondents have not responded to the Decision Letter.

### Decision

5. I have considered everything raised and agree with the outcome of the complaint set out in the Decision Letter.
6. Under Regulation 30(1) of the LGPS Regulations 2013, a Scheme member is entitled to immediate payment of their benefits provided they have attained normal pension age and are not an employee in local government service.
7. However, when the Applicant applied to take his LGPS benefits in 2022, he was an employee of the Council. This was because the order for interim relief, made by the Employment Tribunal in June 2021, "*ordered the continuation of the [Applicant's] contract of employment from the date of termination of employment... until the determination or settlement of the complaint*". Therefore, as the Applicant was

employed, he was not entitled to payment of benefits under the Scheme. I cannot direct the Respondents to provide benefits outside of the Applicant's entitlement under the LGPS Regulations 2013. So, I find that the Respondents refusal to do so whilst the Applicant was an employee did not amount to maladministration.

8. For the reasons provided in the Decision Letter and in the section above I do not uphold the Applicant's complaint.

**Dominic Harris**

Pensions Ombudsman

Date 16 December 2024

# Decision Letter

29 October 2024

Dear Parties,

Scheme            Local Government Pension Scheme (**LGPS**)  
Applicant        Mr E (**the Applicant**)  
Respondents    Royal County of Berkshire Pension Fund (**the RCBPF**) and  
                     Slough Borough Council (**the Council**) (the Applicant and  
                     Respondents each a **Party** and together, the **Parties**).

I have now reviewed this complaint and any information provided. I am writing to set out my decision.

From what I have seen the matter appears to be within the jurisdiction of the Pensions Ombudsman.

I would also like to assure the Parties that I have reviewed the matter afresh and independently of our Resolution Team.

## Complaint summary and background information

The Applicant complained that the Respondents have blocked access to his benefits in the LGPS, even though he is over 55 years old.

The main points in the sequence of events are:-

- The Applicant was employed by the Council and is a member of the LGPS.
- The Applicant made a claim for Unfair Dismissal from the Council, following the termination of his employment in May 2021.
- Following an Interim Relief Order in June 2021, the Applicant's contract of employment with the Council continued from the date of termination.
- The Council has stated that, in July 2022, the RCBPF received an "Option to Receive Payment of Benefits" form (**the Option Form**) from the Applicant, which he had been sent to him following the termination of his employment in May 2021, and which confirmed the unreduced value payment options available to him.

- The payment requested by the Applicant was declined on the basis that he was still employed by the Council.
- The Applicant's contract of employment continued until March 2024, when a Judgment by an Employment Tribunal for the Applicant's claim for Unfair Dismissal was made.
- The Applicant has told us that, following the Judgment, his LGPS benefits have been paid.

I acknowledge there may have been other exchanges of information between the Parties.

Unless an objection is raised, each Party is deemed to have waived any dispute resolution process that may apply before complaining to The Pensions Ombudsman, including for example the Scheme's internal dispute resolution procedure.

### **My decision**

I do not agree that this complaint should be upheld and the Respondents should not be required to take any further action. Further, I do not consider that any further investigation will change the outcome of the complaint.

My reasons for reaching this view are:-

- The Ombudsman's role is to decide a complaint or dispute in accordance with the relevant pension scheme rules and established legal principles, rather than what he considers fair or reasonable.
- When the Applicant applied to take his LGPS benefits, in 2022, Section 30 of The Local Government Pension Scheme Regulations 2013<sup>1</sup> (**the Regulations**) stated that an LGPS member was entitled to immediate payment of his benefits provided they had attained normal pension age and were not an employee in local government service (section 30(1)).
- Following the Interim Relief Order in June 2021, the Applicant continued to be an employee of the Council from May 2021. As the Applicant's employment had been reinstated, payment of his LGPS benefits was not possible, in accordance with the Regulations, until the Unfair Dismissal claim concluded in March 2024.
- The Interim Relief Order was made by an Employment Tribunal Judge and was legally binding.

- I have not seen the Option Form. However, the Applicant has not disputed that this form related to his entitlement following his redundancy. At the time of the payment request, the Applicant was not redundant but was still employed by the Council and therefore the option requested was not applicable at that point.
- In my view, the Respondents' decision not to allow the Applicant to take his LGPS benefits while still in employment was correct and in accordance with the Regulations.

Yours sincerely

[Name of caseworker]  
Senior Jurisdiction Adjudicator