

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondent	London Borough of Redbridge ( <b>the Council</b> )

## Outcome

1. Mrs N's complaint against the Council is partly upheld. To put matters right, for the part that is upheld the Council shall pay Mrs N £1,000 for the serious distress and inconvenience that she has suffered as a result of its errors.

## Complaint summary

2. Mrs N complained about the level of professional service she received from the Council, highlighting two primary issues: the failure to inform her on or around her reaching age 60 that she was entitled to claim an unreduced pension, and the failure to provide her with deferred benefit statements (**DBS**) in the years 2017, 2018, 2019 and 2020. Mrs N says that due to these errors she has incurred a financial loss.

## Background information, including submissions from the parties

3. The Scheme is a defined benefit arrangement, which is governed by Regulations (**the Scheme Regulations**). The Regulations applicable to Mrs N's complaint are the Local Government Pension Scheme Regulations 1995 (as amended) (**the 1995 Regulations**), and the Local Government Pension Scheme Regulations 2013 (**the 2013 Regulations**).
4. Regulation C3 of the 1995 Regulations stipulates that Normal Retirement Age (**NRA**) for a member who has completed 25 years of membership in the Scheme is age 60 (See Appendix 1).
5. Regulation 89 of the 2013 Regulations stipulates that the relevant administering authority of the Scheme must issue an annual benefit statement to all of its active, deferred and pension credit members (See Appendix 2).
6. Mrs N was employed by the Council and joined the London Borough of Redbridge Pension Fund (**the Fund**). The Fund is part of the Scheme and under the 2013

Regulations the “appropriate administrating authority” of the Fund is the Council. At the time Mrs N commenced this employment she was provided with the Scheme Guide which detailed the pension benefits and options to which she was entitled.

7. On 18 April 1993, Mrs N left pensionable service with the Council and, as she had not reached her NRA, she became a deferred member of the Scheme.
8. On 28 July 1994, the Council provided Mrs N with a letter confirming that her pension, in normal circumstances, would become payable in March 2017, when she reached age 60 (**the 1994 Letter**). The notes appended to this letter stated that female members of the Scheme were allowed to claim their pension from age 60, however, their benefits would be reduced if they were unable to complete 25 years of membership in the Scheme by the time they reached age 60.
9. Between 1994 and 2016, the Council provided Mrs N with an annual DBS which showed that her pension was payable from March 2017, when she reached age 60. These statements also included the following note:

“You may elect to receive your benefits from age 60, but these may be reduced to reflect their early payment”.
10. In March 2017, Mrs N reached her NRA of 60.
11. Around January 2021, Mrs N contacted the Council because she had not received any correspondence regarding her pension.
12. On 4 February 2021, the Council responded to Mrs N informing her that her pension was available for payment. It apologised that it had failed to notify her in March 2017, at her NRA of 60, that she was entitled to claim her pension. However, it confirmed that her pension would be backdated to that date.
13. On 2 March 2021, Mrs N complained to the Council under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). Specifically, she said that on or around her reaching age 60, the Council failed to inform her that she was entitled to claim an unreduced pension. She mentioned that she had not received any DBS from the Council since 2016. She also expressed concerns that the DBS she had received between 1994 and 2016 were unclear as they only stated that her pension would become payable in March 2017, when she reached age 60, but did not specify that this pension would be paid unreduced.
14. On 31 March 2021, the Council issued its Stage One IDRP response. It stated the following: -
  - Mrs N’s NRA under the 1995 Regulations was age 60 provided that she accrued 25 years of membership in the Scheme by the time she reached age 60 in March 2017. As Mrs N’s pension was not put into payment at her NRA, her pension had been backdated with arrears from that date, with interest for late payment.

- The DBS it had provided to Mrs N between 1994 and 2016 clearly stated that her pension would become payable from March 2017, at age 60. However, it accepted that these statements did not specify that this was the date for the payment of unreduced pension benefits. Moving forwards, it would ensure that the coming years DBS reflected this information.
  - The 1994 Letter explained to Mrs N that if she completed 25 years of membership in the Scheme, her pension would be paid to her on an unreduced basis in March 2017, when she reached age 60. It accepted that the wording used in the 1994 Letter now seemed ambiguous, but the prescribed wording was suggested by the Local Government Association at that time.
15. Mrs N was dissatisfied with the Council's response and requested that her complaint be reviewed under Stage Two of the IDRP.
16. On 12 July 2021, the Council issued its Stage Two IDRP response which stated the following: -
- Regrettably, there had been a breakdown of procedures due to which the payment of Mrs N's pension was subject to a delay. It accepted that this could not be considered acceptable. It had determined that there had been failures in terms of the provision of information to Mrs N. This included the omission of DBS for the years 2018, 2019 and 2020 and its failure to notify Mrs N in March 2017, at age 60 that she was entitled to claim her pension. However, it was satisfied that the correct actions had been taken to rectify the problem.
  - On becoming aware of its errors, the Council had taken immediate action to commence the payment of Mrs N's pension, including the payment of arrears of pension and pension increases backdated to March 2017, together with interest for the late payments. Also, as Mrs N had not received DBS in the years 2018, 2019 and 2020, it had recalculated the relevant statements for those years and enclosed copies with its response.
  - Calculating late payment interest, particularly in relation to annual pension payments, was not a straightforward exercise. Mrs N's late payment interest was calculated in accordance with the Scheme Regulations, interest was due at 1% above base rate on a day-to-day basis from the pension due date to the date of payment and compounded with three monthly rests.
  - It appreciated that Mrs N found the 1994 Letter and her DBS' to be unclear regarding the date on which her unreduced pension would become payable. So, it had decided to carry out a review of the correspondence it issues when informing deferred members about their pension options.
  - As a gesture of goodwill, it was willing to offer Mrs N a compensation payment of £500.

17. Mrs N's position:-

- The Council failed to inform her, on or around her reaching age 60, that she was entitled to claim an unreduced pension. It also failed to provide her with a DBS in the years 2017, 2018, 2019 and 2020. These failures have resulted in her incurring a financial loss. As she was unaware that she could claim an unreduced pension when she reached age 60 in March 2017, she took dividends from the company she co-owns with her husband between 2017 and 2021 to supplement her personal income. If she had known about her entitlement to an unreduced pension at age 60, her personal income could have been covered by her pension payments.
- The 1994 Letter and the DBS' she received between 1994 and 2016 only confirmed that her pension would become payable in March 2017, when she reached age 60. These documents did not specify that this pension would be paid unreduced. The note included in the DBS' led her to believe that if she claimed her pension at age 60, her benefits would be reduced due to early payment.

18. The Council's position:-

- Mrs N was entitled to claim unreduced pension benefits from her NRA of 60. She was provided with the 1994 Letter after she became a deferred member of the Scheme. This letter clearly stated that Mrs N's pension would become payable in March 2017, when she reached age 60. The wording used in the 1994 Letter was considered sufficient given that members were provided with the Scheme Guide when they joined the Scheme.
- It aimed to contact deferred members a few months prior to their NRA. Unfortunately, this did not happen in Mrs N's case. However, the process had now been streamlined to ensure that all deferred members were contacted in advance of their NRA.
- The production of DBS was outsourced to a third party until recently. So, there was no way for the Council to determine if a DBS was provided to Mrs N in 2017. It did acknowledge however that it failed to provide Mrs N with a DBS in 2018, 2019 and 2020.
- There was no record of Mrs N contacting the Council when she realised that she had not received a DBS since 2016, there was also no record of Mrs N requesting any form of retirement quotation.

## **Adjudicator's Opinion**

19. Mrs N's complaint was considered by one of our Adjudicators who concluded that further action was required by the Council. The Adjudicator's findings are summarised below in paragraphs 20 to 29.

20. As the Scheme is a defined benefit arrangement, the Council was statutorily required by the Occupational and Personal Pension Schemes (Disclosure of information) Regulations 2013 (as amended) (**the Disclosure Regulations**), to provide certain information when Mrs N joined the Scheme, when she left pensionable service, and once her pension became payable. Regulation 20 of the Disclosure Regulations stipulates that members should be informed of their pension options once their pension has or is about to become payable (See Appendix 2).
21. In Mrs N's case, her pension became payable in March 2017, at her NRA of 60 as per the 1995 Regulations, and the Council was obligated to notify Mrs N of her pension options at that time. Given that the Council did not inform Mrs N at or around age 60 that she was entitled to claim an unreduced pension, it was the Adjudicator's opinion that the Council had failed to comply with the Disclosure Regulations, which constituted maladministration.
22. As the Scheme's administrator, the Council was required under the 2013 Regulations to provide Mrs N with a DBS each year. Considering that, the Council did not provide Mrs N with a DBS in the years 2017, 2018, 2019, and 2020, it was the Adjudicator's opinion that the Council had failed to comply with the 2013 Regulations which amounted to further maladministration. Although the Council had not accepted that it failed to provide Mrs N with a DBS in 2017, considering the non-provision of DBS in the years 2018, 2019 and 2020, it was more likely than not, that the Council also failed to provide Mrs N with a DBS in 2017.
23. The Adjudicator noted Mrs N's complaint about the 1994 Letter and the DBS' she received between 1994 and 2016. However, she concluded that this aspect of Mrs N's complaint lacked sufficient merit. She explained that DBS were standardised for all deferred members of the Scheme, and the 1994 Letter was issued in line with the guidance provided at that time by the Local Government Association. The information the Council was required to communicate in the DBS that was specific to Mrs N, in accordance with Schedule 5 of the Disclosure Regulations was the pension benefits she had accrued in the Scheme, and her pension commencement date (See Appendix 4). Considering that, this information was duly provided by the Council, it was the Adjudicator's opinion, that the Council had complied with the Disclosure Regulations in this instance.
24. In cases of maladministration, the Pensions Ombudsman would only uphold a complaint if there was evidence that a financial loss or non-financial injustice had occurred. Further, in order to remedy the financial loss he would direct that the affected member be restored back to the position they would have been in had the maladministration not occurred.
25. Mrs N claimed that she had incurred a financial loss due to the Council's errors. She said that as she was unaware that she could claim an unreduced pension when she reached age 60 in March 2017, she took dividends from the company she co-owned with her husband to supplement her personal income between 2017 and 2021. She

stated that this income could have been covered by her pension payments had she known about her entitlement to an unreduced pension at age 60.

26. The Adjudicator disagreed that Mrs N had suffered a financial loss as her decision to take dividends from her company essentially meant that she was redistributing her own funds to supplement her personal income. She explained that a financial loss would be evident if Mrs N had been forced to take out loans or had incurred debt with third parties. However, since Mrs N relied on her own company's capital, it was difficult to conclude that she had suffered any financial disadvantage due to the Council's failure to inform her at age 60 that she was entitled to claim an unreduced pension and its failure to provide her with DBS in 2017, 2018, 2019 and 2020. In the Adjudicator's view, Mrs N's ability to draw dividends from her company diminished her claim that she had suffered any financial detriment, as it suggested that she had the financial means to support herself while she was not in receipt of a pension. The Adjudicator also noted that Mrs N had not contacted the Council to request details of any possible pension payments around that time.
27. Further, it was the Adjudicator's opinion that Mrs N had only claimed a financial loss with the benefit of hindsight. This was because there was no evidence to suggest that Mrs N would have refrained from taking dividends from her company even if the Council had informed her at age 60 that she could claim an unreduced pension. It was possible that Mrs N would still have used her company's dividends for personal income out of convenience or preference. Therefore, Mrs N's assertions regarding the financial decisions she would have made had she known that her unreduced pension was payable from age 60 were speculative and assumed a level of certainty that may not have existed at the time.
28. Additionally, the Council had backdated Mrs N's pension to March 2017, when she reached age 60, including arrears and pension increases, as well as late payment interest calculated in accordance with the Scheme Regulations. This, in the Adjudicator's view, effectively remedied the situation Mrs N found herself in. It also restored her to the financial position she would have been in had the Council correctly informed her at or around age 60 that she was entitled to claim an unreduced pension and had been provided with the DBS'. Thus, any perceived loss or financial disadvantage Mrs N may have experienced had been rectified through the backdated payment. Also, it was open to Mrs N to use any lump sum or pension payment she had received from the Council to replenish the dividends she drew from her company.
29. In relation to non-financial justice, the Adjudicator concluded that the Council should increase its compensation offer to £1,000 in light of the fact that it was responsible for two instances of maladministration. This higher amount should be paid in recognition of the serious distress and inconvenience Mrs N had suffered as a result of the Council's failure to comply with both the Disclosure Regulations and the Scheme Regulations. Consequently, the Adjudicator was of the view that Mrs N's complaint should be partly upheld.

30. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. In summary, Mrs N made the following additional comments:

- Due to the Council's errors, she was unaware that she could claim an unreduced pension in March 2017, at age 60. As a result, she took dividends from the company she co-owned with her husband for personal income. These dividends could have been reinvested in a private pension arrangement to provide her with an additional pension in her later years, and to reduce her personal tax liability.
- She did not raise any enquiries with the Council or request retirement quotations from 2017 until January 2021 because she believed that her unreduced pension would not be payable until March 2023, at age 66. Consequently, chasing information about her pension was not a priority for her at that time.
- Her independent financial adviser (**IFA**) saw all the correspondence she received from the Council regarding her pension. At no point did her IFA indicate that her pension could be put into payment in March 2017.
- The Adjudicator had not considered the quantum and veracity of the financial loss she had suffered, which she estimated to be around £12,000. She wanted the Council to place her in the same financial position she would have been in had she known that she could claim an unreduced pension in March 2017.

31. While I have considered Mrs N's additional comments and reviewed the matter, I agree with the Adjudicator's Opinion summarised above. Therefore, I will address only the central issue of Mrs N's complaint, which pertains to the financial loss she claims to have experienced.

### **Ombudsman's decision**

32. The crux of Mrs N's complaint was that due to the Council's errors she was unaware that she could claim an unreduced pension when she reached age 60 in March 2017. She wanted the Council to place her in the same financial position she would have been in had she known that she could claim an unreduced pension in March 2017.

33. After thoroughly reviewing Mrs N's complaint, I find that Mrs N had received sufficient information from the Council to have reasonably known that she was entitled to an unreduced pension from March 2017, when she reached age 60. There is no dispute that, Mrs N was provided with DBS' up until at least 2016, along with the 1994 letter, both of which clearly stated that her pension would become payable in March 2017, at age 60. I find that these documents provided Mrs N with ample information about her pension options to make informed financial decisions. Consequently, I find the Council's failure to notify Mrs N about her entitlement to an unreduced pension in March 2017, and its failure to provide her with DBS' between 2017 and 2021 did not, on the balance of probabilities, cause her to make financial decisions that she would not otherwise have made.

34. I am not persuaded by Mrs N's contention that she believed that her unreduced pension would become payable in March 2023, at age 66. Primarily because all of the communication she had received from the Council between 1994 and 2016 consistently indicated that her unreduced pension would come into payment in March 2017, at age 60. I would have expected Mrs N to have sought clarification or additional information from the Council had she thought her pension came into payment at age 66. Further, if that was Mrs N's understanding then it seems to me illogical to have then contacted the Council about her pension more than two years before reaching age 66.
35. Mrs N said that between 2017 and 2021, she drew dividends from the company she co-owned with her husband to meet her income needs. Mrs N contended that had she known about her entitlement to an unreduced pension at age 60, she would have invested those dividends in a private pension arrangement which would have allowed her to benefit from an additional pension in her later years, and to reduce her personal tax liability.
36. I do not doubt that Mrs N would have claimed her unreduced pension in March 2017, at age 60, if the Council had sent her a reminder or a DBS at that time. However, it is speculative to assume how she would have used the dividends she drew from her company between 2017 and 2021. Her assertion that she would have invested them in a private pension arrangement rather than using them for immediate income, cannot be guaranteed and could have been influenced by a range of personal circumstances unrelated to the Council's errors.
37. In conclusion, I find that the Council has adequately remedied its errors by backdating Mrs N's pension to March 2017, when she reached age 60 and in paying interest on the arrears. I find there is no evidence to support Mrs N's claim for financial loss.
38. However, in relation to non-financial injustice I agree with the Adjudicator that Mrs N will have suffered serious distress and inconvenience as a result of the Council's maladministration. In recognition of this I find that an award of £1,000 is appropriate in the circumstances.
39. I partly uphold Mrs N's complaint.



CAS-68834-K0G7

## **Directions**

40. Within 28 days of the date of the Determination, the Council shall pay Mrs N £1,000 or the balance thereof taking into account any previous payments in respect of distress and inconvenience that has already been paid.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

30 August 2024

## **Appendix 1**

### The Local Government Pension Scheme Regulations 1995 (as amended)

#### “C3 Meaning of “normal retirement age” and “NRD”

(1) In these regulations, in relation any member, “normal retirement date” or “NRD”, means –

- (a) in the case of a member who by his 60<sup>th</sup> birthday has a total period of membership of at least 25 years, that birthday;
- (b) in the case of a member who first has such a total period of membership by a date after his 60<sup>th</sup> birthday but before his 65<sup>th</sup> birthday, the day after that date; and
- (c) in the case of a member who does not fall with paragraph (a) or (b), his 65<sup>th</sup> birthday;

and normal retirement age means his age at the commencement of his NRD...

## **Appendix 2**

### The Local Government Pension Scheme Regulations 2013

89. - (1) An administering authority must issue an annual benefit statement to each of its active, deferred, deferred pensioner and pension credit members.

(2) Subject to paragraph (3), the statement must be issued no later than five months after the end of the Scheme year to which it relates.

(3) A statement must be issued before the end of the five month period mentioned in paragraph (2) where a member makes a request in writing to the administering authority unless that authority is unable to comply with the request because relevant data is not available.

(4) The statement for an active member must be provided in accordance with section 14 of the Public Service Pensions Act 2013

### **Appendix 3**

#### The Occupational and Personal Pension Schemes (Disclosure of information) Regulations 2013 (as amended):

20 ---(1) The information mentioned in paragraph (2) must be given to a person in accordance with this regulation where benefit under the scheme has, or is about to, become payable to the person.

(2) The information is the information listed –

(a) in paragraphs 6 to 9 of Schedule 7, and

(b) in Part 1 of that Schedule where the person has an opportunity to select an annuity under any rights and options in relation to the death of the member.

(3) The information mentioned in paragraph (2)(a) must be given –

(a) where benefit becomes payable on or after normal pension age before benefit becomes payable, if practicable and in any event within one month after benefit becomes payable or

(b) where benefit becomes payable on a date before normal pension age, within two months of that date.

(4) The information mentioned in paragraph (2)(b) must be given to the person having the opportunity mentioned in that paragraph before benefit becomes payable.

## **Appendix 4**

### The Occupational and Personal Pension Schemes (Disclosure of information) Regulations 2013 (as amended):

#### Schedule 5

##### Part 2 - Information for active and deferred members

4. The date on which the member's pensionable service started.
5. A summary of the method for calculating the member's benefits and any survivors' benefits.
6. Details of how any deduction from benefits is calculated.

##### Part 3 - Information for deferred members

7. The date the member's pensionable service ended.
8. The amount of the member's benefits and survivors' benefits payable from the date benefits are payable.
9. The amount of the member's pensionable remuneration on the date pensionable service ended.