

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Cornwall Pension Fund (CPF)

Outcome

1. Mrs Y's complaint against CPF is partly upheld. To put matters right for the part that is upheld, CPF shall award Mrs Y £1,000 for the serious distress and inconvenience that she has suffered as a result of the maladministration.

Complaint summary

2. Mrs Y has complained that CPF, the LGPS Administrator:-
 - Provided her with incorrect information about the additional years of service that she purchased in each annual benefits statement (**ABS**) since 2006.
 - Made numerous errors with her pension.
 - Provided her and her accountant with incorrect figures during a telephone conversation, which they relied on when planning for her retirement.
 - Did not advise her that if her working hours in one of her posts reduced, it would reduce the number of additional years of service that she was purchasing.

Background information, including submissions from the parties

3. On 4 January 1996, Mrs Y became employed by Cornwall Council (**the Council**) and became a member of the LGPS (**Post A**).
4. On 1 July 1997, Mrs Y took on an additional role with the Council and joined the LGPS with a separate membership (**Post B**).
5. CPF has provided details of the figures that Mrs Y received in her 2007 ABS. It set out her benefits and projected service at her normal retirement date (**NRD**) in May 2016:

- **Post A**

- An annual pension of £487.53; and
- £1,462.59 as a lump sum.
- Projected scheme service at NRD: 2 years and 364 days

- **Post B**

- An annual pension of £1,497.39; and
- £4,492.17 as a lump sum.
- Projected scheme service at NRD: 9 years and 263 days

6. On 21 November 2007, Mrs Y wrote to CPF. She queried the annual cost of purchasing the maximum amount of additional years of service for both posts.

7. On 27 November 2007, CPF responded to Mrs Y's query and said:-

- It had included illustrations of the benefits she could expect to receive based on her current earnings, with and without purchasing any additional years of service.
- The illustrations were in respect of both posts.
- The cost of purchasing one year of part-time equivalent service - 52 days in Post A and 208 days in Post B - would be 2.38% of her annual salary.
- The maximum amount of additional years of service was six and 2/3rd years based on full-time service. Mrs Y did not work full-time, so it had calculated the part-time equivalent service as 346 days in Post A and three years and 290 days in Post B. The cost would be 15.87% of her salary.
- The quotations were for illustrative purposes only.
- Mrs Y would only have the option to purchase additional years of service up until her next birthday.
- Should she choose to purchase the additional years of service, the contributions would be:
 - payable on a monthly basis from May 2007; and
 - subject to her obtaining satisfactory medical evidence from her doctor, at her own cost.

8. In response, Mrs Y opted to purchase the maximum additional years of service.

9. On 11 January 2008, CPF wrote to Mrs Y and confirmed that it had received her application to purchase additional years of service in the LGPS. It also said that:-

- It had started the contracts to purchase 346 days for Post A and three years and 290 days for Post B.
- Mrs Y worked part-time, so the maximum allowable additional service that she could purchase was six and 2/3rd years of service. This would be proportionate to the percentage of hours that she currently worked.
- The cost of purchasing the additional service was 15.87% of her annual salary.
- The additional contributions would be payable monthly from May 2007 until May 2016.
- It had provided a copy of this letter to the Council's payroll department so it could make the deductions from her salary.
- The deduction schedule was:
 - 31.74% of her salary between January and July 2008;
 - 26.62% of her salary in August 2008; then
 - 15.87% of her salary from September 2008 until May 2016.

10. Later that year, Mrs Y received her 2008 ABS. This quoted:-

- For Post A:-
 - Date joined: 4 January 1996.
 - Current part-time percentage: 14.22%.
 - NRD: 10 May 2016.
 - Projected scheme service at NRD: 9 years 242 days.
 - An annual pension of £1,674.92 and a lump sum of £4,255.
- For Post B:-
 - Date joined: 1 July 1997.
 - Current part-time percentage: 56.88%.
 - NRD: 10 May 2016.
 - Projected scheme service at NRD: 16 years and 141 days.
 - An annual pension of £2,987.97 and a lump sum of £5,887.48.

11. In March 2011, a government-commissioned report recommended replacing existing public service pension schemes with a new scheme. In the new scheme, pension entitlement would be based on career average revalued earnings (**CARE**) rather than final salary.

12. After negotiations, the changes recommended in the report were accepted and formalised in the Public Service Pensions Act 2013. The changes to the LGPS came into effect as of 1 April 2014.

13. CPF has no record of Mrs Y's ABS between 2011 and 2014 so it has provided sample copies. Each included the following caveat:

"This statement does not confer legal entitled to the above benefits. Whilst every effort has been made to ensure accuracy of the benefits quoted, your entitlement will be in accordance with the [LGPS] Regulations."

14. In 2015, Mrs Y received an ABS from CPF which said:-

- At her NRD, she might receive:-
 - **Post A**
 - £4,441.48 as a lump sum; and
 - an annual pension of £1,745.75.
 - **Post B**
 - £6,226.71 as a lump sum; and
 - an annual pension of £3,114.32.
- The benefits were estimated only and did not confer any statutory or contractual rights, nor were they legally binding.

15. In May 2016, Mrs Y reached her NRD and completed the purchase of additional years of service. However, she remained employed and an active member of the LGPS.

16. In 2016, Mrs Y received an ABS from CPF which said:-

- At her NRD, she might receive:-
 - **Post A**
 - £4,575.53 as a lump sum; and
 - an annual pension of £1,816.72.
 - **Post B**
 - £6,331.30 as a lump sum; and
 - an annual pension of £3,181.86.
- The benefits were estimated only and did not confer any statutory or contractual rights, nor were they legally binding.

17. In 2017, Mrs Y received an ABS from CPF which stated that:-

- At her NRD, she might receive:-
 - **Post A**
 - £4,636.05 as a lump sum; and
 - an annual pension of £1,932.19.
 - **Post B**
 - £6,415.23 as a lump sum; and
 - an annual pension of £3,469.21.
- The benefits were estimated only and did not confer any statutory or contractual rights, nor were they legally binding.

18. Mrs Y has said that on 12 October 2017, she and her accountant had a telephone conversation with CPF. Mrs Y contends that she was provided with the same figures as set out in paragraph 17. CPF has no record of the telephone recording or a contemporaneous telephone note.

19. In May 2018, Mrs Y took voluntary retirement. She became entitled to an immediate pension and lump sum on the grounds of late retirement because she had passed her NRD.

20. On 18 May 2018, CPF sent Mrs Y a retirement pack and set out the options that were available to her:

- Option A (standard benefits)
 - **Post A**
 - Lump sum - £1,550.28
 - Annual pension - £962.75
 - **Post B**
 - Lump sum - £4,480.38
 - Annual pension - £3,125.31
- Option B (enhanced lump sum and reduced pension)
 - **Post A**
 - Lump sum - £4,679.62
 - Annual pension - £701.97

- **Post B**
 - Lump sum - £14,994.30
 - Annual pension - £2,249.15

- Option C
 - A tax free cash sum at a level between those set out under option A and option B.
- Option D
 - To preserve her benefits within the LGPS and take them at a time of her choosing before her 75th birthday.

21. In response, Mrs Y contacted CPF because the standard benefits were lower than she expected.

22. On 18 June 2018, Mrs Y raised a complaint with CPF and said:-

- The figures in the retirement pack were considerably less than had been previously quoted.
- In her 2014 ABS, CPF stated that she would receive:
 - £1,313.71 as an annual pension and a lump sum of £3,484.13 for Post A; and
 - £2,381.64 as an annual pension and £5,184.68 as a lump sum for Post B.
- The benefits that she had accrued as of 31 March 2014 were ring-fenced because of the new CARE scheme which was introduced from 1 April 2014. However, the pension that CPF said that she was now entitled to was lower than quoted in the 2014 ABS.
- CPF should explain:
 - why there was a discrepancy between the figures in the retirement pack and the telephone conversation in October 2017;
 - how it had calculated the figures in the retirement pack and provide a breakdown; and
 - whether the figures in the retirement pack included the final salary benefits and CARE benefits that she had accrued.

23. On 3 July 2018, CPF responded to Mrs Y's complaint, which it did not uphold, and said:-

- The figures in the retirement pack, (as set out in paragraph 20 above), were correct.

- It had identified an error with the pensions system that it used. This affected the value of the benefits shown in the ABS since she began to purchase the additional years of service:-
 - Mrs Y opted to purchase the maximum additional years of service, which was six and 2/3rd years of service, proportioned to 346 days in Post A and three years and 290 days for Post B. This was recorded correctly on her pension record.
 - Due to an error with its pension systems, the purchase of the additional years of service was not correctly proportioned in the calculations shown in Mrs Y's ABS from 2008. This meant that an increase of the full six and 2/3rd years of additional service was shown on the ABS for both posts instead of the proportioned amount.
 - In 2007, Mrs Y received an ABS before she opted to purchase additional years of service. It showed that her projected scheme service for Post B at her NRD was nine years and 253 days. The ABS that she received in 2008 showed the projected scheme service as 16 years and 141 days. This was an increase of the full six and 2/3rd years of additional service instead of the proportioned amount. It apologised for the mistake.
 - It accepted that there was an error, but it could only pay Mrs Y's benefits in accordance with the LGPS Regulations.
- Mrs Y's benefit calculations were complex, so it had examined her payroll records from the Council during the course of her employment. This was outside of its normal procedures. The review had highlighted another issue with the information that the Council provided between May 2007 and August 2010. This resulted in an increase to the standard benefits that were quoted for Post B, for which it had included a revised benefit summary.
- It had included the calculations that it used to calculate her benefits.
- It apologised for the error, but it could not pay benefits that exceeded her legal entitlement under the LGPS Regulations.

24. On 9 August 2018, Mrs Y formally complained under stage one of the Internal Dispute Resolution Procedure (**IDRP**). She said:-

- She was disappointed that CPF had provided her with incorrect ABS for at least 10 years.
- The error significantly impacted her financial position when she retired.
- In the final response letter dated 3 July 2018:-

- CPF had said that the figures she received in the retirement pack were correct. However, it then said that her benefits for Post B were incorrect and had increased.
- It was difficult for her to have confidence in the newest figures that it had provided.
- CPF had said that the purchase of additional service was not correctly proportioned, however, it was not possible for her to identify this from the ABS. Furthermore, it had failed to identify the error for at least 10 years.
- It had not provided a detailed calculation of her benefits in relation to Post A, only for Post B.
- CPF had not sent her any correspondence to explain that a reduction in her working hours would affect her ability to purchase the maximum allowable additional service.
- In 2008, there was issue with her purchase of additional years of service which took more than nine months to resolve.
- The total financial loss that she had suffered, in relation to her benefits for both posts, was £1,225.91 of annual pension and £4,783.97 from her lump sum.
- She sought:
 - an independent verification of all of the figures provided by CPF;
 - the increased benefits that CPF had previously quoted plus interest because she had relied on the incorrect information when she decided to retire, and suffered a financial loss as a result; and
 - an award for the distress and inconvenience that the repeated maladministration had caused her.

25. On 14 November 2018, the Council issued its stage one IDR response. It did not uphold Mrs Y's complaint and said:-

- CPF had advised it that:-
 - The error with Mrs Y's figures occurred in her ABS. However, each ABS included a disclaimer which said that the figures were estimates.
 - There was no record of a telephone conversation with Mrs Y's accountant in October 2017. Furthermore, it would not have provided figures during a telephone conversation without a letter of authority.
 - It sent Mrs Y a letter in September 2018 and asked her for details of her accountant so that it could have a conversation with him about the alleged information that he received. Having received authority from Mrs Y, it had a

discussion with her accountant who could not confirm who or when he spoke to CPF. He could only confirm the figures he was provided with which were those set out in the ABS that Mrs Y received in 2017.

- It did not believe that Mrs Y had suffered a financial loss because she still chose to retire after she had received the correct figures.
- It did not believe that Mrs Y was due any financial compensation.
- There were errors in Mrs Y's ABS since 2008. However, the disclaimer in each ABS made it clear that the figures quoted did not confer any contractual rights and were not legally binding.
- Mrs Y should not have placed any reliance on the ABS.
- It was not bound by the incorrect figures.

26. On 29 January 2019, Mrs Y requested that her complaint be reconsidered under the second stage of the IDR. She said:-

- Some of the ABS did not contain the caveat that the figures were not legally binding.
- It was not reasonable to say that she should not have relied on the ABS.
- She and her accountant had a telephone conversation with CPF and the overstated figures were confirmed as her correct entitlement. She decided to retire based on this information.
- While CPF did not have a record of the telephone conversation, both she and her husband were present when the figures were confirmed.
- She did not receive the correct figures until after she retired.
- It was not reasonable to expect her to change her decision to retire or to withdraw her notice between receiving the lower figures and retiring.
- She had suffered a financial loss because she relied on the information that CPF provided, to her detriment.
- She was not confident that CPF had provided the correct revised figures.
- She was unhappy with the way that her complaint had been handled.
- Her name was misspelt several times in the stage one IDR response.

27. On 19 March 2019, the Council provided its stage two IDR response. It did not uphold Mrs Y's complaint for similar reasons to those provided in the stage one IDR response. It also said:-

- It was unfortunate that the ABS she received each year after she elected to purchase additional years of service were incorrect. However, it was not reasonable to expect CPF to check that each statement was correct.
- The letter that Mrs Y signed on 2 January 2008 set out how much additional service she would purchase. The ABS for the year ending 31 March 2008 showed an increase in pensionable service at age 65 of six and 2/3rd years compared to the 2007 ABS. Mrs Y should have noticed that this was incorrect.
- Actual retirement details were completed by professionally qualified and experienced senior administrators. There was no record of such a calculation around the time of the alleged telephone conversation, in October 2017.
- In its experience, employees requested up-to-date retirement figures before they decided to retire, rather than relying on estimated figures in an ABS. Mrs Y relied on an ABS that was issued over 12 months before she retired which it did not consider to be reasonable.
- It accepted that Mrs Y did not receive the correct retirement figures before she retired. But, in its opinion, the figures that she received on 18 May 2018 were sufficiently correct to enable her to make a decision about retiring.
- The figures provided on 3 July 2018 were slightly higher than those provided in the retirement pack.
- Mrs Y had suffered a loss of expectation rather than a financial loss. But the benefits payable had been calculated in accordance with the LGPS Regulations.
- It was not reasonable for Mrs Y to expect to be financially better off when she retired, compared to when she was working.
- It could provide Mrs Y with a copy of her membership record so that she could arrange for a third party to review its calculations, at her own expense.

Mrs Y's position

28. Mrs Y submits:-

- An error occurred in around 2008 and affected every ABS that she received since then.
- The figures that CPF provided in the retirement pack were incorrect, so, she was not aware of the correct figures before she retired.
- She has no confidence in the figures that CPF has provided.
- It was not reasonable to expect her to identify the error.
- She contends that a telephone conversation took place in October 2017 and the figures set out in paragraph 17 were confirmed.

- She could not have changed her decision to retire within such a small window, particularly when she had already formally resigned and arrangements had been made for her retirement.
- While the error may have been unique, it did not justify the error or other issues that she experienced.

CPF's position

29. CPF submits:-

- The error with Mrs Y's record was unique and it corrected the error on its system before Mrs Y left employment.
- Mrs Y still retired after she had received the correct figures, so it does not believe that she is due a financial award for the errors in the ABS.
- It apologised for the errors in Mrs Y's ABS, but it could only pay Mrs Y the benefits that she was due from the LGPS.
- Mrs Y has not suffered any actual financial loss because she has received the correct benefits.
- Mrs Y opted for an enhanced lump sum and reduced pension. She received:
 - **Post A**
 - Lump sum – £4,776.10
 - Annual pension – £701.85
 - **Post B**
 - Lump sum – £15,794.85
 - Annual pension – £2,320.73

Adjudicator's Opinion

30. Mrs Y's complaint was considered by one of our Adjudicators who concluded that there was maladministration on the part of CPF. The Adjudicator's findings are summarised below:-

- CPF had sent Mrs Y a number of incorrect ABS and the figures in the retirement pack were incorrect. In this case, the provision of incorrect information constituted maladministration. The normal course of action would be to put Mrs Y back in the position she would have been in had she received the correct information. This did not mean paying her the overstated benefits because she was only entitled to receive the correct benefits in accordance with the LGPS Regulations.

- A complaint of negligent misstatement must be based upon an incorrect statement, usually referred to as a representation. The representation must have been clear and unequivocal and it must have been reasonable for the claimant to have relied on it to their detriment.
- The projected scheme service for both posts in the 2008 ABS was overstated by more than six years, compared to the 2007 ABS. Mrs Y ought to have noticed the significant increase in projected service and questioned whether the corresponding pension and lump sum quoted were correct.
- CPF held no record or contemporaneous telephone note to support Mrs Y's assertion that it had confirmed the figures set out in paragraph 17. While the Adjudicator did not dispute that Mrs Y and her accountant had a telephone conversation with CPF, they could not be certain what was said without a call recording, or a telephone note made at the time.
- The figures that Mrs Y said CPF confirmed during the telephone conversation were those detailed in the 2017 ABS. The ABS stated that the figures were estimated and did not confer any rights.
- In the Adjudicator's view, while Mrs Y and her accountant needed figures to assist with Mrs Y's retirement planning, it was not reasonable for them to rely on the figures to the extent that they did. So, a claim for negligent misstatement failed on this basis.
- Mrs Y received the retirement pack seven days before she retired. In the Adjudicator's view, it was unlikely that Mrs Y would have had sufficient time to change her decision to retire. However, it would have been reasonable for her to request an up-to-date illustration of her benefits before she retired. Had she done so, it is likely that the error would have become apparent because it was identified when she received the retirement pack.
- While Mrs Y said she had no confidence in CPF's calculations, the Adjudicator had no reason to doubt that Mrs Y's benefits had been correctly calculated. Furthermore, it was not in The Pensions Ombudsman's (TPO) remit to verify calculations. So, Mrs Y would have to arrange for a suitably qualified professional to verify the figures at her own cost.
- In the Adjudicator's opinion, the maladministration identified would have caused Mrs Y significant distress and inconvenience. So, CPF should award her £500 in recognition of this.

31. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs Y provided her further comments which do not change the outcome. In summary, she said:-

- There were two sources that confirmed the overstated benefits – the 2017 ABS and the telephone conversation with CPF in October 2017. While the ABS had a

disclaimer, there was none given in the telephone conversation. So, she believed that a claim for negligent misstatement had been met because it was reasonable for her to rely on what she was told during the telephone conversation.

- The level of award that the Adjudicator had suggested was not sufficient because:-
 - She identified the error on 18 June 2018 and CPF had made no effort to resolve the matter with her to avoid her referring her complaint to TPO.
 - She had invested a significant amount of time preparing correspondence in relation to her complaint.
 - In the case of *Smith v Sheffield Teaching Hospitals NHS Foundation Trust* [2017] EWHC 2545 (Ch), the High Court held that TPO had incorrectly awarded £500 and the award was increased to £2,750.

32. CPF provided additional information about the error which led to an increase in Mrs Y's benefits for Post B. It said that during Mrs Y's membership, it collected part-time hours information annually and in bulk from employers. After it identified the error in 2018, it recalculated Mrs Y's benefits based on her average monthly hours, rather than annual average. At this point, it identified a discrepancy in the information provided by her employer. This resulted in her average part-time hours between May 2007 and May 2016 increasing from 44.414% to 52.389% for Post B. As a result, the amount of additional years of service that she purchased increased from 2 years and 350 days to 3 years and 180 days.

33. I agree with the Adjudicator's Opinion except for the level of distress and inconvenience that was caused. I note the additional points raised by Mrs Y.

Ombudsman's decision

34. Mrs Y contends that she and her accountant had a telephone conversation with CPF in October 2017. However, there is no telephone recording or a contemporaneous telephone note that details what was discussed during the telephone conversation. There is no evidence to support Mrs Y's claim that CPF confirmed the incorrect figures during this telephone conversation. Without evidence of this supposed incorrect representation, I cannot make a finding of negligent misstatement. In any case, had there been evidence that CPF provided Mrs Y with the overstated figures during a telephone conversation, it was not reasonable for her to rely on the figures to the extent that she did.

35. CPF had a duty to provide Mrs Y with correct information. However, Mrs Y, as a member of the LGPS, also had a duty to review the ABS for any clear and obvious errors. The 2007 ABS showed the correct projected scheme service at Mrs Y's NRD. However, the 2008 ABS that she received, after she opted to purchase the additional years of service, showed that her projected service at her NRD for each role had increased by six and 2/3rd years. Mrs Y ought to have reasonably noticed the

significant error when she received the 2008 ABS and contacted CPF to query the difference. Had she done so, CPF may have been able to correct the error sooner than it did. While there is no doubt that each ABS Mrs Y received from 2008 onwards were incorrect, they did not provide a guarantee of benefits and included a caveat which explained this.

36. The figures that Mrs Y received in the retirement pack for Post B were also incorrect. CPF has said that this is due to an issue with the information that Mrs Y's employer provided between May 2007 and August 2010. CPF, as the LGPS administrator, relies on employers and members to provide it with correct information. So, CPF cannot be held accountable for providing incorrect figures in the retirement pack that were based on incorrect information from Mrs Y's employer regarding her working hours.
37. I have reviewed the correspondence that CPF sent to Mrs Y when she queried and opted to purchase the additional years of service. CPF referred to Mrs Y working part-time hours in the correspondence. It also made it sufficiently clear that the purchase would be proportionate to the percentage of hours that she worked. That Mrs Y was unaware that any reduction to her working hours would reduce the amount of additional years of service that she purchased is not a result of maladministration by CPF.
38. I consider all of the submissions and evidence when deciding the appropriate level of award for non-financial injustice. This allows to me to determine the time and effort spent by an applicant in relation to the maladministration, pursuing the complaint and the level of distress suffered. I have seen no evidence to support Mrs Y's assertion that CPF failed to attempt to resolve her complaint after the error was identified in June 2018. Rather, it responded to her initial complaint and subsequent IDRPs in a timely manner. That Mrs Y did not receive the decision that she had wanted, and chose to refer her complaint to TPO, does not constitute maladministration on CPF's part.
39. Mrs Y refers to a case where the High Court held that the previous Deputy Pensions Ombudsman had erred in awarding Mrs Smith £500. There may be some similarities in the two cases, namely that both members received misinformation, but each case is assessed on its own merits.
40. The purpose of awards for non-financial injustice is to acknowledge any distress or inconvenience that an applicant has suffered as a result of maladministration. It is not to mitigate any financial loss that an applicant believes they have suffered, or to penalise a respondent for its mistakes.
41. I have considered the factors that apply in Mrs Y's case. There is no doubt that CPF has sent Mrs Y an incorrect ABS each year since 2008. When CPF became aware of the error with Mrs Y's ABS, it took reasonable steps to put matters right. I acknowledge that there was an additional error with Mrs Y's pension for Post B. But this was a result of incorrect information provided by Mrs Y's employer, not

maladministration on CPF's part. In deciding upon the appropriate level of award for distress and inconvenience, I have taken into account that Mrs Y had the opportunity to realise that something was amiss when comparing the 2007 ABS with the one issued in 2008. However, this is a mistake that has been repeated over a number of years and, I have no doubt, it has caused Mrs Y serious distress and inconvenience, the appropriate award for which is £1,000.

42. I partly uphold Mrs Y's complaint.

Directions

43. Within 28 days of the date of this Determination, CPF shall pay £1,000 to Mrs Y in respect of the serious distress and inconvenience which she has suffered.

Anthony Arter CBE

Deputy Pensions Ombudsman
8 August 2023