

## Ombudsman's Determination

Applicant	Ms R
Scheme	Local Government Pension Scheme ( <b>LGPS</b> ) – Buckinghamshire Pension Fund ( <b>the Pension Fund</b> )
Respondent	Buckinghamshire Council ( <b>the Council</b> )

## Outcome

1. I do not uphold Ms R's complaint and no further action is required by the Council.

## Complaint summary

2. Ms R has complained that the Council failed to inform her in a timely manner that she did not qualify for a partly unreduced pension under the '85 year rule' from the LGPS. In particular:-
  - She would have postponed her retirement until March 2022 to qualify for a partly unreduced pension, which would have been payable from age 60.
  - The Council denied her the opportunity to defer her retirement.

## Background information, including submissions from the parties

3. Ms R commenced employment with the Council on 6 October 2003. According to her contract of employment dated 18 September 2003:-
  - Ms R would automatically become a member of the LGPS, unless prior to starting her employment she informed the Council that she did not wish to join.
  - The Council had enclosed an information pack detailing her pension choices<sup>1</sup>.
4. The LGPS is a statutory public sector scheme governed by the LGPS Regulations 2013 (as amended) (**the LGPS Regulations**). It operates as a centralised arrangement with each administering authority maintaining its own fund.

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<sup>1</sup> Ms R enquired about a possible transfer of previous pension rights into the LGPS by completing a "Pensions Option Form" on 21 September 2003.

5. The Pension Fund is one of 86 funds that make up the LGPS in England and Wales. The Council is the administering authority for the Pension Fund and the department of the Council carrying out this function is the Pensions and Investments Team (**the LGPS Team**).
6. The Council is therefore both Ms R's former employer and the administering authority for the Pension Fund.
7. The Council's functions as an employer participating in the Pension Fund are carried out by the Pensions Team within the HR Department. This is a separate unit from the LGPS Team.
8. As part of the Council's role as administering authority for the Pension Fund, the LGPS Team kept members informed of changes to the LGPS by various means.
9. The Pension Fund website provides access to a wide range of information on the LGPS including guides, forms and factsheets. The LGPS Team was responsible for updating the Pension Fund website with relevant information.
10. On 19 December 2018, the LGPS Team informed Ms R that:

"I have checked your transfer information from DWP and your service with them was 18 years 236 days; the transfer value this provided bought 16 years 274 days in the Pension Fund..."
11. On 26 November 2020, Ms R informed the LGPS Team that she had handed in her notice to the Council. She asked whether the estimated early retirement pension and lump sum figures, which she had obtained from the Pension Fund website, were accurate.
12. On 7 December 2020, the LGPS Team confirmed that the pension figures were up to date.
13. On 9 December 2020, Ms R informed the LGPS Team that she had received her final pension figures. She had read literature on the Pension Fund website about the 85 year rule and had requested information on her membership of the LGPS.
14. In general terms, the 85 year rule allows qualifying members to draw pension benefits accrued before a relevant date<sup>2</sup> without actuarial reduction where the sum of their age and years of membership of the LGPS equals or exceeds 85. A transfer credit counts as membership for this purpose.
15. For members who have paid into the LGPS before 1 October 2006, the 85 year rule automatically applies in full where benefits are voluntarily drawn from age 60. This

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<sup>2</sup> This date is determined by the member's date of birth, their date of joining the LGPS and when they met the conditions for the 85 year rule. In Ms R's case, it was 31 March 2008.

provision is set out in Schedule 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 (**the 2014 Regulations**)<sup>3</sup>.

16. It is also possible for the 85 year rule to apply in full where benefits are voluntarily drawn by the member on or after age 55, and before age 60, provided the employer agrees to this. This is set out in Schedule 2 of the 2014 Regulations.
17. Ms R contacted the LGPS Team for a reply to the enquiry she made. On 22 December 2020, Ms R was informed that she would complete 17 years of service between 6 October 2003, the date she joined the LGPS, and 31 December 2020, her proposed retirement date.
18. On 23 December 2020, Ms R telephoned the LGPS Team. It responded the following day by e-mail and explained that:

“The 85 year rule does not apply before the age of 60, this means that if you take your benefits before age 60 any protections on your service did not apply.

I have put a link below which does explain this in more detail...”
19. On 24 December 2020, Ms R accessed information on the 85 year rule by clicking on the link the LGPS Team had provided. She told the LGPS Team that if she took her pension benefits before age 60, they could be “protected up to 2008”.
20. The LGPS Team replied on the same day, and explained that:

“As the website says “If you choose to voluntarily draw your pension on or after age 55 and before age 60 and you have rule of 85 protections, these will not automatically apply. Your employer can choose to allow the rule of 85 to apply. This is a discretion and you can ask your employer what their policy is on this matter. If you choose to voluntarily draw your pension on or after age 55 and before age 60 and your employer does not choose to allow the rule of 85 to apply, your benefits are reduced.”

You would have to go to your HR department and ask them if this is something they are willing to do.”
21. In an e-mail dated 24 December 2020 to the Council’s HR Service Desk, Ms R enquired:

“Can you advise if the 85 year rule can be applied to me as I do qualify for 85 years. Pensions have told me to get in touch with you. I leave 31.12.20...”
22. The HR Service Desk replied on the same day and said that it had forwarded the enquiry to the Council’s HR Pensions Team. It would contact Ms R as soon as possible.

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<sup>3</sup> The relevant extracts from the 2014 Regulations are set out in the Appendix.

23. On 29 December 2020, Ms R contacted the HR Pensions Team for a response via the HR Service Desk.
24. On 30 December 2020, the HR Pensions Team Lead informed Ms R that:-
- The Council could, at its discretion, allow the 85 year rule to apply in her case. It would need to request details of her unreduced benefits from the LGPS Team and the associated cost to the Council. It would also need to seek the agreement of her line manager (**the Line Manager**).
  - It normally took 10 working days to receive a response from the LGPS Team.
  - The HR Pensions Team had already asked the LGPS Team to process her early retirement application.
25. Ms R replied on the same day and confirmed that she wished to take her reduced early retirement benefits from the LGPS and would investigate the 85 year rule further. However, if this was not possible, she would like an indication of how long the payment of her benefits would be delayed because she could only manage on her salary until the end of January.
26. The HR Pensions Team Lead requested an estimate of retirement benefits under the 85 year rule. She contacted the Line Manager and explained that:
- “I have received a request from Ms R to look into the possibility of changing the type of retirement she can take. This is an 85 year rule retirement, you may not be aware of this type but basically if the employee’s age and years of service add up to 85 they could take their benefits under this rule. It is at the discretion of the employer and depends if there will be a cost to the Council.
- I have requested an estimate from the LGPS Team to see if there will be any cost, once this has come through perhaps we can discuss how to proceed.
- Just so that you are aware this type of request should have been asked for prior to the retirement date, my team have already processed a normal retirement for Ms R which LGPS are dealing with, if the 85 year type of retirement is used, the LGPS Team can fine us.”
27. On 31 December 2020, the Line Manager sent an e-mail to Ms R, which said that:
- “I have spoken with HR...they have sent an enquiry to the LGPS regarding the 85 year rule.
- I didn’t miss anything out when I processed your leaver details...As you know I did check with both HR and Pensions about this. Anyway, when the quotes... have come back, I’ll talk to HR again...so will advise next when I know too.”
28. On 7 January 2021, Ms R received the tax-free lump sum available to her from the LGPS on early retirement.

29. On the same day, the Council informed Ms R that it was not possible for the LGPS Team to cancel the tax-free lump sum. However, it was looking into the 85 year rule; and if this affected her pension, she would receive backdated payments.
30. The HR Pensions Team Lead contacted the LGPS Team several times for the information she had requested. She kept Ms R updated with any developments and told Ms R that her pension from the LGPS would commence at the end of January 2021.
31. On 5 February 2021, the LGPS Team sent a copy of the estimate of retirement benefits to both the HR Pensions Team Lead and the Line Manager.
32. In her e-mail dated 5 February 2021 to the Line Manager, the HR Pensions Team Lead said:

“...can I please ask you to look at the quote and let me know if you agree to pay this strain...Our discretionary policy with LGPS for the Council states that we would approve these on a case by case basis, and only be approved in extreme circumstances (i.e. if the retirement is beneficial to the Council).

Once you have made your decision can you please let [Ms R] know...”
33. On 11 March 2021, the Head of Finance at the Council informed Ms R that her application for a partly unreduced pension under the 85 year rule had been declined on the grounds of cost.
34. Ms R was disappointed with this decision. She said that if the Council had informed her at the correct time, she could have continued working until age 60.
35. In April 2021, Ms R complained to the Council concerning its alleged failure to provide advice on the 85 year rule prior to her leaving employment. However, it did not uphold her complaint.
36. In its letter dated 20 April 2021 explaining its decision, the Council said:-
  - Prior to contacting the HR Pensions Team, Ms R had spoken directly with the LGPS Team, which was a separate external body. If she had any concerns about those conversations, she should contact the LGPS Team.
  - It was Ms R's personal choice to take her retirement benefits from the LGPS when she left the Council on 31 December 2020.
  - The booklet entitled 'Buckinghamshire Council Retirement Guidance', was available to Ms R on the Council's intranet.
  - This document provided details of various pension options and “links to the relevant pension schemes”. It recommended that employees should seek independent financial advice before making a decision so that they were fully aware of the financial implications.

- It offered employees contemplating retirement an in-depth retirement course.
- In its role as Ms R's employer, it could not provide her with any advice on how to take her pension benefits or on the 85 year rule.

37. Ms R was dissatisfied with the outcome and appealed the decision. She explained that:-

- All the information she had received on the LGPS was provided by the HR Pensions Team. However, it did not mention the 85 year rule.
- She only found out about the 85 year rule in December 2020, after a work colleague sent her a link to information published on the Council's old intranet pages.
- She dealt with the HR Pensions Team throughout and only contacted the LGPS Team to obtain details of the early retirement benefits available to her from the LGPS.
- The LGPS Team initially misinformed her that she did not qualify under the 85 year rule.
- At that time, it was still open to her to withdraw her resignation. However, the HR Pensions Team did not respond to her e-mails until 30 December 2020, when it was too late to do so.
- In November 2020, she attended a retirement course offered by My Wealth but the 85 year rule was not mentioned. The course organiser said it had been tailored to the Council's requirements and that they were familiar with the LGPS. The course organiser telephoned her to provide independent financial advice. So, she assumed that she had received all the necessary information to make her decision.

38. On 27 April 2021, the Council refused Ms R's request for her complaint to be investigated under Stage Two of its complaints procedure. The Council said that her complaint was based on unsubstantiated conversations between employees. In any event, the pension process fell outside its jurisdiction.

39. Following the complaint being referred to The Pensions Ombudsman (**TPO**) Ms R and the Council made further submissions that have been summarised in paragraph 40 and 41 below.

40. **The Council's position**

- The LGPS Team provided Ms R with retirement quotations and guidance on her options, including information on the 85 year rule, prior to her date of leaving the LGPS.

- Ms R found out about the 85 year rule during her discussions with the LGPS Team and from information published on its own website. Details of this rule were also included in its LGPS Discretionary Policy, which was available on its old and new intranet pages.
- If Ms R wished to discuss anything further or take any options forward after speaking with the LGPS Team, this would be followed up by the Council.
- The Council's intranet provides pensions related information and signposts employees to the Pension Fund website for further details about the LGPS.
- The Pension Fund website is very comprehensive and covers every aspect of the LGPS. This includes a detailed explanation on how the 85 year rule works.
- The Council did not hold details of the transferred in service available to Ms R. This information was personal to Ms R and was held on the LGPS Team's records.

#### 41. **Ms R's position**

- Information on the 85 year rule was not available on the Council's intranet prior to her leaving employment. Some of her former colleagues also knew nothing about the 85 year rule.
- Had she been made aware of the position in good time, she would not have left the Council before she had attained age 60. She was approaching her 59 birthday. If she could have earned extra pension at 60, by holding on for a further 15 months, she is certain that she would have delayed her retirement.
- She is a single parent and needs the money from her pension. Her reason for leaving the Council was mainly to care for her mother who has advanced Parkinson's. However, her brother could have moved in with her mother sooner. She disputes any suggestion that she would not have continued in employment until age 60.
- She did her utmost to resolve issues but had obstacles in her way. It should not be this difficult to leave employment and obtain all the correct information from one department. She should have been given the pension figures before leaving so that she could decide whether to leave employment.
- The Council indicated that the cost of an immediate partly unreduced pension was significant. This shows that the value of the pension benefits she has missed out on are also significant.

## Adjudicator's Opinion

42. Ms R'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 in paragraph 43 to 57 below.
43. An employment contract generally provides little guidance on the pension rights of an employee and would normally only deal with an individual's entitlement to join a pension scheme.
44. In Ms R's case, her employment contract said she had been given information on her pension choices. This would only have provided a summary of the benefits available to her from the LGPS.
45. As the administering authority for the Pension Fund, the Council was obliged under the Occupational and Personal Pension Scheme (Disclosure of Information) Regulations 2013 (**the Disclosure Regulations**) to provide Ms R with basic information on how the benefits payable from the LGPS are calculated.
46. The Adjudicator highlighted that the LGPS Team used various communication methods, including newsletters and the Pension Fund website, to disseminate information to members. The Pension Fund website provided members with access to LGPS guides, forms and factsheets and was the main medium for communication.
47. The Council supplied a scheme booklet to new staff joining the LGPS with their employment contracts and provided concise guidance on its intranet about the benefits available from the LGPS. The Council signposted that full details were available from the Pension Fund website and provided relevant links. Furthermore, it recommended that members should seek independent financial advice before making any decisions concerning their pension.
48. The Council only offered limited support to its employees because it was the LGPS Team's responsibility to provide information on the Pension Fund.
49. A member who is no longer in employment, can elect to receive his/her pension before Normal Pension Age (**NPA**), provided the member is age 55 or over. NPA is defined as the employee's State Pension Age (**SPA**) at the time the employment ends, subject to a minimum age of 65.
50. The pension will usually be subject to an actuarial reduction to allow for the fact that it would be paid for longer. Under the 2014 Regulations, where the member has reached age 60, and the 85 year rule is otherwise satisfied, the reduction will not apply to benefits accrued before a relevant date. Furthermore, where the member is aged between 55 and 60, the reduction is not applied if the employer, in its sole discretion, agrees to the member taking a partly unreduced pension.
51. The Adjudicator noted that Ms R was a member of the LGPS on 30 September 2006. However, for Ms R to satisfy the 85 year rule, her age at the date she took her



benefits and the length of her LGPS membership, including any transfer credit, must add up to 85 years or more.

52. The Adjudicator also noted that Ms R chose to take her retirement benefits when she left the Council on 31 December 2020. Her age on that date was 58 years and 9 months and she had 17 years 2 months' membership in the LGPS. She also had a transfer credit of 16 full years. The sum of Ms R's age and LGPS membership (in whole years) as at 31 December 2020 was 91. So, Ms R satisfied the criteria for the 85 year rule protection as at 31 December 2020 and when she subsequently attained age 60 in March 2022.
53. The Council said that the LGPS Team would have provided guidance on the 85 year rule with the retirement quotations Ms R received prior to her leaving date. Ms R contends that she only found out about the 85 year rule in December 2020. The Adjudicator had not seen any supporting evidence to corroborate either of those statements. However, he said it was clear from the evidence that:-
  - By 9 December 2020, Ms R had correctly concluded that she had 85 year rule protection.
  - On 24 December 2020, the LGPS Team informed Ms R that if she chose to retire early between age 55 and 60, the 85 year rule protection may not automatically apply. However, her employer could choose to allow the protection to apply.
54. On 24 December 2020, while the LGPS Team was processing her application for reduced voluntary early retirement benefits, Ms R decided to ask the Council whether it could, at its discretion, choose to allow the 85 year rule to apply in her case.
55. Ms R received a reply from the Council on 30 December 2020, a day prior to her leaving date. The Council explained that it had to request details of her partly unreduced benefits, including the associated costs, and the agreement of her Line Manager before reaching its decision. Having been informed by the Council that it was unable to provide her with a decision by 31 December 2020, and with no guarantee it would exercise its discretion, Ms R decided to continue with her application.
56. Ms R contends that if the Council had informed her in a timely manner that she did not qualify for partly unreduced early retirement benefits under the 85 year rule, she would have continued working until she attained age 60 in March 2022. However, Ms R made her application only seven days before her leaving date. The Adjudicator noted that the Council's offices were closed over the Christmas period. In the Adjudicator's view, Ms R did not give the Council sufficient time to make a decision before 31 December 2020.
57. In view of the circumstances, Ms R could have asked the Council on 30 or 31 December 2020, whether she could withdraw her resignation. In the Adjudicator's view, the evidence fell short of establishing that there had been maladministration on the part of the Council.

58. Ms R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms R and the Council provided further comments which do not change the outcome.

59. A summary of Ms R's additional comments is provided below:-

- Her mother has advanced Parkinsons. As a single parent, she could not afford to pay for a carer. So, it was not as simple as deciding, a week before her retirement date, to withdraw her resignation.
- She and her brother had to decide who gave up work. Based on the pension figures, they decided that she should retire. Had she been given different figures, they would have made a different decision.
- She had discussions with the pensions team and her Line Manager about six months before her date of leaving. She was told to wait until November 2020 to hand in her notice. If she had done this earlier, she may have got information from the LGPS Team in good time; but she did not.
- She has suffered a financial loss in connection with this matter. At the very minimum, she should be awarded redress in recognition of this.

60. A summary of the Council's additional comments is provided below:-

- The Council has responsibility to ensure that the Pension Fund is administered and managed correctly. There are two separate teams within the Council. The LGPS Team undertakes the administration of the Pension Fund. The Pensions Team within the HR Department fulfils the Council's role as an employer participating in the scheme including, for example, managing pension contributions and applications for retirement.
- The LGPS Team has not kept a copy of the information pack containing a LGPS leaflet that was sent to Ms R with her contract of employment in 2003.
- Ms R completed and returned a death grant nomination form and a pensions options form from the pack. This proved that Ms R did see the information in it.
- Neither the Council nor the LGPS Team have retained obsolete versions of the LGPS leaflet.
- The LGPS leaflet is nowadays kept up to date on the Pension Fund website.
- When the 85 year rule was revoked with effect from 1 October 2006 and remained in place only for service before that date, the LGPS Team notified members of the change by sending them during 2006 full details of this rule in two newsletters and also in an information sheet issued with the annual benefit statement. It has submitted copies of these documents as evidence to TPO.

- The LGPS Team has not retained details of how the changes made in 2008 to the LGPS were communicated to members. However, the 85 year rule “would not have been mentioned as this...had already been communicated to people affected”.

61. I note the additional points raised by Ms R and the Council but agree with the Adjudicator’s Opinion.

### **Ombudsman’s decision**

62. Ms R contends that she has suffered a financial loss because the Council failed to inform her in a timely manner that she did not qualify for a partly unreduced pension under the 85 year rule.

63. I note, however, that Ms R made her application for partly unreduced benefits under the 85 year rule just seven days before her leaving date. This did not give the Council sufficient time to make its decision.

64. The Council has provided me with copies of two newsletters and an information sheet that it says the LGPS Team sent in 2006 to members of the LGPS, including Ms R, which provided full details of the 85 year rule that was being phased out from 1 October 2006.

65. I am prepared to accept on the balance of probabilities that the LGPS Team did send these documents out and consequently find that Ms R had most likely been informed of the 85 year rule in 2006 at the very latest.

66. I am therefore also satisfied that the Council, as administering authority, discharged its duties under the Disclosure Regulations to provide basic information to Ms R on how LGPS benefits were calculated in relation to the 85 year rule and the changes to the rule in 2006.

67. Furthermore, the position on the 85 year rule, for members who choose to voluntarily draw their pension on or after age 55 and before age 60, is sufficiently explained in the LGPS literature (and LGPS Regulations), which were available to Ms R on the Pension Fund website.

68. I note that the Council signposted Ms R to information published on its intranet. The Council also drew her attention to the Pension Fund website, where she could obtain comprehensive information about the LGPS, and recommended that Ms R seek independent financial advice.

69. Ms R says that she had been contemplating early retirement some six months prior to handing in her notice in November 2020. I recognise that this would have been an important decision, which had financial implications. It is regrettable that Ms R did not obtain personalised financial advice during that six month period before making any

decisions about her retirement options. Particularly, as the rules governing the 85 year rule, and the level of protection it provides, are complicated.

70. If Ms R had obtained personalised financial advice, she would likely have recalled the 85 year rule much earlier on in the process and could have contacted the Council in good time. This would have given the Council adequate time to consider her application for unreduced benefits prior to Ms R leaving its employment.
71. While I sympathise with Ms R's circumstances, I do not find that there has been maladministration on the part of the Council in dealing with her early retirement application.
72. I do not uphold Ms R's complaint.

**Dominic Harris**

Pensions Ombudsman

11 October 2024

## **APPENDIX**

### **The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014**

#### **Schedule 2**

“1.—(1) Paragraph 1(3) applies where a member of the description in paragraph 3(1) or (2) makes a request to receive immediate payment of retirement benefits under—

(a) regulations 30(1) (choice of early payment of pension) or 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations;

(b) regulation 30(5) (retirement benefits: early retirement) of the 2013 Regulations if the member was aged 60 or over at the date of making the request;

(c) regulation 30(5) (retirement benefits: early retirement) of the 2013 Regulations if the member is aged 55 or over but aged under 60 at the date of making the request and the Scheme employer agrees that paragraph 1(3) of this Schedule should apply;

(d) regulation 30(6) (retirement benefits: flexible retirement) of the 2013 Regulations...

(2) Paragraph 1(4) applies where paragraph 1(1)(c) would otherwise apply, but the member's Scheme employer does not agree that paragraph 1(3) of this Schedule should apply.

(3) Where this sub-paragraph applies—

(a) if the member satisfies the 85 year rule, that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulations 30(4) or 30A(4) of the Benefits Regulations or regulation 30(5) or (6) of the 2013 Regulations; and

(b) if the member does not satisfy the 85 year rule, that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of the request and the date the member would satisfy the 85-year rule, or age 65 if earlier.

(4) Where this sub-paragraph applies—

(a) if the member satisfies the 85-year rule, that part of the member's benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of the request and age 60; and

(b) if the member does not satisfy the 85 year rule, that part of the member's benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of the request and the date the member would satisfy the 85 year rule, or age 65 if the member would not satisfy the 85-year rule before that time, or age 60 if later...

4.—(1) For the purposes of this Schedule, a member satisfies the 85-year rule if the sum of—

- (a) the member's age in whole years on the date the request is made under paragraph 1;
- (b) the member's total membership in whole years;
- (c) in a case where the request is made after the member's local government employment ends, the period beginning with the end of that employment and ending with the date the request is made; and
- (d) in the case of a person who was a member of the 1995 Scheme immediately before 1st April 1998, any qualifying period counted by virtue of regulation 123 of the 1997 Regulations (rights as to service not matched by credited period) which was awarded before 1st April 2008, is 85 years or more."