

## Ombudsman's Determination

Applicant	Mrs S
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondent	Local Pension Partnership ( <b>LPPA</b> )

### Outcome

1. I do not uphold Mrs L's complaint and no further action is required by Local Pension Partnership (**LPPA**).

### Complaint summary

2. Mrs S' complaint concerns the provision of misinformation, and the delays she experienced in receiving the full payment of her Scheme benefits by way of ill health.
3. Mrs S has also said that LPPA's monetary offer, in recognition of the distress and inconvenience she experienced, is insufficient and should be increased.

### Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mrs S is a member of the Scheme, a defined benefit occupational arrangement, administered by LPPA. Under the Scheme, Mrs S held two periods of consecutive pensionable service from:
  - her employment with Dacorum Borough Council (**DBC** and the **DBC Pension**) between 6 September 1982 and 14 May 2006;
  - and
  - her employment with the Hertfordshire County Council (**HCC** and the **HCC Pension**) from May 2006 onwards.
6. On 9 February 2009, Serco, the former Scheme administrator, asked Mrs S whether she wished to combine her two periods of pensionable service. Due to a difference in her pensionable pay, it also informed her that it might not be advantageous for her to

combine her Scheme benefits. However, Serco incorrectly said that she would still be able to combine her Scheme benefits, at a later date. Based on this information, on 13 May 2009, Mrs S said “[she] did not wish to combine [her] pensions at this point in time”.

7. In June 2021, Mrs S applied for ill health early retirement (**IHER**).
8. On 7 July 2021, LPPA received the Scheme appointed medical advisers (**the MA**) certificate confirming that Mrs S was eligible for a Tier 1 IHER pension. During this time, Mrs S queried whether she could amalgamate her two periods of pensionable service before an IHER pension was paid. In response, LPPA told Mrs S that she could only combine her Scheme benefits at the discretion of her current employer. This was because her request had been received more than 12 months after she joined HCC.
9. On 14 July 2021, LPPA wrote to HCC providing it with the necessary IHER form to complete with Mrs S’ employment details. HCC returned the IHER form, albeit without all the necessary sections completed. Subsequently, LPPA asked HCC to amend the forms; however, LPPA was told that the School Mrs S worked for was on summer leave, and so the form could not be completed until September 2021.
10. On 4 August 2021, LPPA emailed DBC and asked it to consider Mrs S’ IHER application for the payment of her deferred benefits.
11. On 13 September 2021, HCC returned the completed IHER form.
12. On 27 September 2021, Mrs S left HCC employment. Subsequently, the effective date of her Tier 1 IHER pension was the same date. Mrs S said that LPPA should ask HCC to consider accepting an out of time transfer to amalgamate her Scheme benefits.
13. On 28 October 2021, HCC said that it would not accept Mrs S’ amalgamation request on the basis that she declined the opportunity to do so in 2009.
14. On 2 November 2021, LPPA sent Mrs S a quote for her Tier 1 IHER HCC pension. However, Mrs S noticed that there was an error in the pensionable pay used to calculate her benefits.
15. In November 2021, Mrs S submitted two complaints to HCC under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
16. In summary Mrs S said:
  - at no point in 2009 was she told that, if she did not amalgamate her Scheme benefits, she would lose the right to do so in the future; and
  - her final full time equivalent salary from the last two years of her HCC employment had not been used to calculate her IHER pension. Instead, a lower salary from 2018 had been used.

17. On 13 January 2022, HCC provided its stage one IDR response and upheld her complaint in part, and explained that:-

- The Scheme is administered in accordance with the Local Government Pension Scheme Regulations 2013, as amended (**the Regulations**). Regulations 5(A) states that:

“(5A) Where the pensionable pay received by a member during any period specified in paragraph (4)(a)(i) or (4)(b)(i) was, in the opinion of the Scheme employer, materially lower than the level of pensionable pay that member normally received, for the purposes of this regulation the Scheme employer may substitute for the pensionable pay the member received, a higher level of pensionable pay to reflect the level of pensionable pay that the member would normally have received.”

- Furthermore, the Scheme technical guidance for payroll states:

“There is a further adjustment for members who were working reduced contractual hours in the relevant 12 (weekly) or three (monthly) pay periods. If [MA] certifies that the member was working reduced hours wholly or partly because of the condition that caused or contributed to the ill health retirement or death, the hours reduction should be ignored where working out APP. APP should be calculated on the pay the member would have received during the relevant pay periods if they had not been working reduced contractual hours.”

- In calculating her IHER pension, LPPA has acted in accordance with the Regulations by looking back across her last 10 years of earnings. Thereafter, it calculated her IHER pension using a period where her pensionable pay was the highest, which was in 2018, before her working hours, and accordingly her pensionable pay, were reduced.
- As her working hours were reduced by way of ill health, in line with the Regulations, it believed that rule 5A should be invoked. Subsequently, it had instructed LPPA to recalculate her IHER pension to account for the higher pensionable salary she would have received if her hours were not reduced due to ill health.
- She was incorrectly told in 2009 that she could combine her Scheme benefits at a later date. However, she was correctly informed that amalgamating her benefits was not beneficial to her until her HCC salary overtook her DBC salary.
- Despite this misstatement, it was likely that she would still have elected not to combine her Scheme benefits, even if she was informed about the 12-month time limit. This element of her complaint was not upheld.

18. On 21 January 2022, LPPA paid Mrs S a lump sum of £91,016.04 and an arrears sum of £3,298, to account for the IHER pension payments she should have received

since 27 September 2021. These payments were only in relation to her HCC Scheme benefits.

19. On 25 January 2022, Mrs S asked for her complaint to be investigated under stage two of the Scheme's IDRPs. She repeated that she was misinformed in 2009 that she could still amalgamate her pensions at a later date. Further, HCC failed to inform her, at the start of her employment, that she had 12 months to transfer, or combine, any pensions within the Scheme.
20. Between January 2022 and March 2022, Mrs S corresponded with LPPA about the payment of her DBC pension through IHER. However, this was ultimately paused until an outcome had been reached in relation to her stage two IDRPs complaint.
21. On 28 March 2022, HCC provided its stage two IDRPs response and said that it was satisfied that Mrs S would likely have opted to combine her Scheme pensions if she was informed of the 12-month deadline. This was evidenced by her handwritten notes from February 2009, which indicated that she thought she had a future opportunity to revise her decision. Her email of 13 May 2009 said that she did not wish to combine her benefits "at this point in time". So, it agreed to the amalgamation of her Scheme benefits.
22. In April 2022, LPPA informed Mrs S that her two periods of pensionable service in the Scheme had been amalgamated. It also said that DBC had also accepted her application for IHER. It provided her with a IHER retirement quote which took into account the payment of her DBC benefits through IHER and also the amalgamation of her DBC and HCC pensions. However, in calculating this quote, LPPA again used an incorrect pensionable salary.
23. On 10 June 2022, Mrs S received the payment of her DBC IHER pension.
24. Mrs S raised a further complaint about the error in calculating her combined IHER pension, in April 2022, and the subsequent two-month delay. In response, LPPA apologised for the errors/delay and offered her £300 in recognition of any distress and inconvenience (**D&I**) she suffered. Mrs S did not accept this offer as she felt an amount of £2,000 was more appropriate. During this time, Mrs S also contacted the Pensions Ombudsman's Early Resolution Service (**ERS**).
25. The ERS corresponded with LPPA, and it was agreed that HCC would offer Mrs S an additional £300 in recognition of the delays it caused. This took the total amount of D&I up to £600. It was also noted that in line with the Regulations, Mrs S had received late interest payments totalling to £778.16. This was calculated at 1% above the Bank of England's base rate of interest, for each delay period.

## **Adjudicator's Opinion**

26. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by LPPA. The Adjudicator's findings are summarised below:-

- The Adjudicator took note of the substantial errors, as far back as 2009, in the lead up to Mrs S claiming her benefits on the grounds of ill health. These errors lead to a number of delays in paying Mrs S her IHER benefits.
- LPPA did not dispute its role in the errors in calculating Mrs S' IHER benefits as it used an incorrect pensionable salary in the calculations carried out in November 2021 and April 2022. HCC also accepted that Mrs S was misinformed in 2009, that she would still be able to amalgamate her two Scheme benefits in the future, if she did not wish to do so in 2009.
- The Adjudicator believed that the steps taken by HCC, and to a degree LPPA, in recalculating Mrs S' benefits, returned Mrs S to the position that she would have been in had she not of been misinformed, in 2009, and if LPPA had not used an incorrect pensionable salary to calculate her IHER pension.
- It was clear that HCC caused a delay in returning the IHER forms between 14 July and 13 September 2021 due to the school summer break. However, this is not something that was within LPPA's control, so it should not be held responsible for that delay. However, the errors in calculating Mrs S' IHER pension between November 2021 and January 2022, and then again between April 2022 and June 2022, caused nearly four months' worth of delays.
- Between November 2021 and January 2022 Mrs S underwent stage one of the Schemes IDRPs. Consequently, as the subject of what pension salary should have been used to calculate her benefits was in dispute, LPPA was unable to act any further until HCC provided its stage one IDRPs response. Therefore, the Adjudicator believed that the delay between April 2022 and June 2022, was the only unnecessary delay, as this was when LPPA made an error in the calculation of Mrs S' IHER again that did not require HCC's input to correct.
- It was understood that for the period of any of the delays, Mrs S was paid interest on her late payments, as per the Regulations. Taking into account the interest paid and the remedial actions taken to return Mrs S to the correct position, the offer of £600 D&I was sufficient and did not warrant an increase.

27. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. She said that:-

- She took IHER and left HCC employment on 27 September 2021, it then took nearly four months for LPPA to pay her initial IHER benefits on 21 January 2022. Between this period, she was without income. It then took until June 2022 to pay her full IHER pension, after amalgamating her two pensions.
- The whole of the period from 27 September 2021 to June 2022 should be considered an unnecessary and avoidable delay, not just from April 2022 to June 2022. She should not have had to complete both stages of the Scheme's IDRPs in order to receive her IHER pension.

- If it were not for the errors made by HCC and LPPA, she would have received her IHER around 27 September 2021.

28. I note the additional points raised by Mrs S, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

29. Mrs S' complaint primarily concerns the delays caused by errors on the part of HCC and LPPA in paying her IHER pension. However, as the Adjudicator has made clear, the only respondent listed in the complaint accepted for investigation was LPPA, not HCC. So, while I acknowledge the errors caused by HCC, I am only able to investigate and make conclusions in relation to LPPA's action.
30. I have reviewed the timeline of events that took place until June 2022, when Mrs S received her final arrears payment. I note that the initial error in calculating Mrs S' IHER pension, in November 2021, was due to an incorrect pensionable salary, the reasoning for this is explained in paragraph 17.
31. On the face of it, it would be remiss of me to say that initially, in November 2021, LPPA erred in its calculation of Mrs S' IHER pension. As far as LPPA was concerned, it was required to use the highest pensionable pay figure, within the last ten years, to calculate Mrs S' IHER pension. It was only on appeal that HCC exercised its discretion to invoke rule 5(A) of the Regulations to amend Mrs S' pensionable pay. This, in my view, was not something that LPPA was able to amend without the approval of HCC. As a result, I agree with the Adjudicator in that LPPA, is not responsible for the delay between November 2021 and 21 January 2022.
32. I find that there are no delays to consider between 21 January 2022 and 28 March 2022. Between this period Mrs S was undertaking stage two of the IDRPs with HCC regarding the amalgamation of her benefits. This again is not something that LPPA has any control over. However, the two-month delay between April 2022 and June 2022, after HCC agreed to allow Mrs S to amalgamate her benefits, was in my view, an entirely avoidable delay. I say this because the error in April 2022 appears to surround Mrs S' pensionable pay again, which I would not have expected to occur again after it was instructed how to calculate Mrs S' IHER benefits in January 2022.
33. In any event, I am satisfied that LPPA has, properly, recognised its part in the delays Mrs S experienced by offering an amount of £300 by way of an apology. I note the amount offered by HCC brings the total offer up to £600. This is above the minimum level of redress that I would award for errors and delays such as this. Consequently, I am satisfied that the redress offered to Mrs S is adequate when also considering the steps taken to return her to the correct position and the payment of interest for any period of delay. Mrs S should contact LPPA and HCC to accept their respective offers.

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34. I note Mrs S' comment that she should not have had to invoke the Scheme's IDRPs to receive her IHER pension. While I agree with this sentiment in principle, the IDRPs are a chance for an administrator or scheme manager to rectify any errors that may have occurred. Most of the issues stem from misinformation in 2009 that LPPA was not responsible for and with how HCC dealt with responding to her IDRPs complaints. So, it would be inappropriate to lay all the blame on LPPA for Mrs S' need to invoke stage one and two of the IDRPs.
35. Accordingly, I do not uphold Mrs L's complaint.

**Dominic Harris**

Pensions Ombudsman

16 November 2023