

Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Merseyside Pension Fund (Merseyside)

Outcome

1. Mrs N complaint is upheld and to put matters right Merseyside should pay Mrs N the difference between the pension she is receiving and the pension she was told she would receive.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N is unhappy because Merseyside provided her with an inaccurate benefits statement, which she relied on before retiring early. In particular, Merseyside led her to believe that her pension benefits would be higher than they were.

Background information, including submissions from the parties

4. Mrs N joined LGPS in 2007. On 14 April 2014, she requested retirement quotes based on whether she retired at age 60 and age 65. Her Normal Retirement Age (**NRA**) under the Scheme was 65, so the first option would count as early retirement. Mrs N's request was sent to Merseyside by her employer, Wirral Council, the next day.
5. On 2 July 2014, Mrs N received a benefits statement stating that she could receive a lump sum of £46,084 and an annual income of £6,912.90 if she retired at age 60. Mrs N has stated she had not received any other benefit statements previously. Therefore, the one she received on 2 July 2014 was the only one she had to review. As a result of the information it provided, she handed in her notice on 19 September 2014.
6. On 2 November 2014, at age 60, Mrs N retired. However, on 7 November 2014, she received another benefits statement. This statement confirmed that her pension benefits were in fact lower than she had previously been advised. In particular, the

statement said that her lump sum would only be £38,466.79 and her annual income only £5,770.02.

7. On 11 November 2014, Mrs N contacted Merseyside to query the conflicting figures on the two benefits statements. The following day, Merseyside responded to say that the second benefits statement was the correct one. In particular, it explained that a reduction had been applied because she was retiring before NRA.
8. On 13 November 2014, Mrs N told Wirral Council that she had retired based on the benefits statement received in July 2014. She said she could not afford to retire on the benefits she was now being told she was entitled to. As a result, she asked whether the reduction could be waived, or whether she would have to apply for reinstatement.
9. On 27 November 2014, Mrs N chased a response from Wirral Council. On the same day, Wirral Council respond to say her vacancy had already been filled. Mrs N therefore raised a complaint.
10. Merseyside has agreed that Mrs N was sent an incorrect benefits statement, and as such there has been maladministration. However, it has argued that it provided the initial benefits statement based on the request it received from Wirral Council.
11. Merseyside has provided two copies of the retirement quotation request it received from Wirral Council. The forms show that Wirral Council had ticked the box marked 'normal retirement', but that it had also included two termination dates. One was 2 November 2014, and the other was 2 November 2020. In other words, the forms appeared to be requesting benefits statements for each of those ages.
12. On the first copy of the forms in question, there is a handwritten note saying "2 dates for estimate". However, on the second copy, there is a handwritten note saying "1 date for estimate". On this second copy, there is also a handwritten note saying 'not yet' next to the 2 November 2020 date. There is a further handwritten note at the top of the page saying "Rule 85", and a final handwritten note next to the ticked 'normal retirement' box. This last note is almost illegible but the words "waive" and "rule 85" can be made out.
13. Merseyside believes one of its representatives wrote these notes, and that they indicate the representative asked Wirral Council to confirm the grounds on which Mrs N was retiring. Merseyside believes it must have been told to provide a benefits statement for Mrs N on the basis that she was retiring at age 60, but with the early retirement reduction waived. However, Merseyside has been unable to provide any evidence of this conversation and it has stated that Wirral Council also does not have a record of any conversation at that time.
14. Mrs N received a benefits statement quoting pension benefits based on her retirement at age 60. She said that, as a result of the maladministration, she has needed to find other work. However, whilst she has found some work, this has been temporary and part-time.

15. Merseyside said that Mrs N had previously requested, and been denied, ill health early retirement. With this in mind, Merseyside believes that Mrs N would have retired regardless of what her benefits were. However, Mrs N has confirmed that she has since received treatment for her health condition, and as such she is able to work.
16. Lastly, as part of its case file, Merseyside has provided a copy of Mrs N's 2014 annual benefit statement. This statement confirmed that Mrs N had accrued an annual pension of £7,108.88 and a lump sum payment of £47,392.53, and these benefits were based on her contributions up to 31 March 2014.

Adjudicator's Opinion

17. Mrs N's complaint was considered by one of our Adjudicators who concluded that further action was required by Merseyside. The Adjudicator's findings are summarised briefly below:-
 - The Adjudicator considered that there had clearly been maladministration. She conceded it was possible Wirral Council was responsible for this, but that overall there was insufficient evidence for this. Instead, the Adjudicator noted that Merseyside may have sought further clarification on what quotes were needed from Wirral Council, but there was no evidence this happened or that Merseyside was led to believe it ought to calculate an early retirement pension for Mrs N with any reduction waived.
 - The Adjudicator noted that Rule 85 was referred to in the handwritten notes. Historically, under LGPS, Rule 85 said that a member could receive an unreduced early retirement pension at age 60, providing their combined age and years of LGPS membership totalled 85 or more. However, Mrs N did not meet this criteria. The Adjudicator therefore felt that, even if Merseyside had been told Mrs N's benefits were to be calculated under Rule 85, it ought to have been reasonably aware that she was not eligible for this.
 - The Adjudicator was satisfied that Mrs N had relied on the retirement quote from July 2014 when planning her retirement. The Adjudicator felt this was supported by the fact that Mrs N enquired about reinstatement as soon as she discovered her benefits were lower than she had been led to believe. Mrs N has since tried to find permanent, full-time work but she has been unsuccessful. As such, the Adjudicator was satisfied that Mrs N had done all she reasonably could to mitigate her loss.
 - The Adjudicator concluded that Mrs N would not have retired if she had known the correct level of benefits she would receive. On balance, the Adjudicator was persuaded that Mrs N would have continued working until she had accrued sufficient benefits such that she could retire on the same pension as that quoted in the July 2014 statement. The Adjudicator considered that Merseyside had caused Mrs N to lose the opportunity of accruing these benefits, and as such it was

appropriate for Merseyside to pay them. This would place Mrs N back into the position she would have been in, had there been no maladministration.

- The Adjudicator appreciated that there may be a funding strain on LGPS as a result of the above. However, she believed Mrs N should not suffer a detriment by Merseyside's maladministration and Merseyside ought to find the means to offer appropriate redress.

18. Merseyside did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Merseyside provided its further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Merseyside for completeness.
19. In response to the Adjudication, Merseyside has agreed that there has been maladministration, but it finds the Adjudicator's recommendations unacceptable. In particular, Merseyside has stated that the Adjudicator's recommendations would create a strain on LGPS and undermine its willingness to provide retirement quotations in the future, for fear of financial repercussions should there be an error.
20. Merseyside has not offered Mrs N any redress at this stage.

Ombudsman's decision

21. Merseyside has accepted there has been maladministration, although it is not clear whether it accepts responsibility for this. In any event, I agree with the Adjudicator's comments that, on balance, Merseyside is responsible.
22. There is no evidence that Merseyside was given unclear instructions regarding what calculations were required. Furthermore, even if Wirral Council had misled Merseyside on whether Rule 85 applied, I agree that it would have been prudent for Merseyside to check this was the case. This is particularly so given that it only needed to review basic information about Mrs N's membership, which it would have had to hand for the calculations it was already completing.
23. I am also satisfied that Mrs N relied on the July 2014 statement when retiring, and that her actions show that she would not have retired had she known the statement was incorrect. Mrs N has evidenced that she has since tried to mitigate her loss, but she has been unable to do so.
24. If Mrs N had continued working until NRA, she would have accrued further benefits and her pension would have been greater than that quoted in the July 2014 statement. Therefore, I note that she does not need to show she would have worked until age 65. She only needs to show that she would have had to continue working long enough to be able to accrue and receive the benefits outlined in the July 2014 statement, even after a reduction was applied.

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25. Merseyside has not confirmed how long it would have taken for Mrs N to have accrued sufficient benefits, such that she could have retired early and still received the same pension as quoted in the July 2014 statement. However, on balance, I am satisfied she would have done, if she has not reached that stage already. I therefore agree with the Adjudicator's recommendations and I uphold Mrs N's complaint.
26. I appreciate Merseyside's concern about how the redress for Mrs N will impact LGPS. However, this is not a concern for Mrs N and I find that she must receive the appropriate level of redress.
27. Merseyside has also indicated a concern regarding the repercussions of Mrs N's case on future cases. However, I should stress that redress will usually only be appropriate where an injustice has been suffered leading to a financial or non-financial loss.
28. Merseyside should take reasonable steps to ensure it provides accurate retirement quotations on which LGPS members can rely. However, where maladministration does occur, the LGPS member will still need to evidence that they have suffered an injustice as a result.

Directions

29. Within 28 days of the date of this Determination:
 - i) Merseyside will recalculate Mrs N's pension and pay her benefits in line with those outlined in the retirement quote dated 2 July 2014; and
 - ii) pay Mrs N pension arrears due with interest. Interest shall be paid at the base rate for the time being quoted by the reference banks, calculated from the dates Mrs N ought to have been paid each arrear up to the date Merseyside pays the arrears to her.

Anthony Arter

Pensions Ombudsman
26 July 2017