

Ombudsman's Determination

Applicant	Mrs W
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Clwyd Pension Fund (CPF)

Outcome

1. Mrs W's complaint against CPF is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) CPF should pay Mrs W £500.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs W is complaining that CPF caused a delay in the setting up and payment of her benefits from the LGPS at her normal retirement date (**NRD**). As a result, Mrs W is claiming that she lost out on potential investments relating to the tax free cash lump sum.

Background information, including submissions from the parties

4. Mrs W left employment on 29 September 2011 and decided to defer taking her pension benefits until NRD on 30 August 2016.
5. In January 2016, Mrs W requested, by telephone to CPF, an estimate of her retirement benefits at NRD. CPF provided this on 16 February 2016 and Mrs W contacted CPF again by telephone in April 2016 to inform it that she wished to take her benefits at her NRD. Mrs W says she was told that she would need to wait until closer to her retirement date to inform CPF of her decision to retire.
6. Mrs W contacted CPF again in early August 2016. She also says that during her telephone conversations with CPF, she was incorrectly informed that she had already taken her benefits and that this took time for her to resolve.
7. Following Mrs W's contact, CPF wrote to her AVC provider, Equitable Life, on 16 August 2016 and requested details of her AVC fund. This was provided to CPF on 31 August 2016.

8. It was clear to Mrs W that she would not be receiving either her tax free cash lump sum or her pension by her NRD and therefore she raised a complaint about this, as well as the service she had received, to CPF on 28 August 2016.
9. As Mrs W had previously informed CPF that she would be out of the country between September and November 2016, CPF emailed her the retirement forms for signing on 7 September 2016. Mrs W emailed CPF on 14 September 2016 to say the forms would be returned via airmail and that her complaint was still outstanding. CPF received her completed forms on 23 September 2016 (after CPF's cut-off payroll date of 20 September 2016).
10. On 29 September 2016, Equitable Life confirmed to CPF that the AVC funds had been paid (as Mrs W had expressed that she wished this to be paid as a lump sum, rather than an annuity purchased on the open market). CPF then informed Mrs W on 3 October 2016 that her tax free cash lump sum would be paid within the next few days and the pension, with arrears, in the following payroll.
11. On 7 October 2016, Mrs W emailed CPF to state that she was still awaiting a response to her complaint. CPF responded on the same day and confirmed:
 - its usual procedure was to contact members one month prior to their NRD, with details of their options and the benefits payable, but apologised that this had not happened in relation to Mrs W;
 - as Mrs W's benefits were being paid more than one month after her retirement date, she would receive interest on the tax free cash lump sum; and
 - it apologised for the failure to keep Mrs W informed and for the delays caused. It offered Mrs W £100 to recognise any stress and inconvenience caused by this.
12. Mrs W emailed CPF on 10 October 2016 to state that some of her original queries were still outstanding and she raised this again via email on 7 November 2016. She also raised issues regarding the level of service and communication she had received. CPF responded with an acknowledgement email on 23 November 2016, but Mrs W says that she chased CPF for a response on 28 February and 15 March 2017.
13. CPF responded on 21 March 2017 and answered Mrs W's points. It mentioned that when a member has AVCs, the retirement process should start earlier and acknowledged that this did not happen in relation to Mrs W. It also said that if Mrs W was still unsatisfied with the response, she could make a complaint via the LGPS' internal dispute resolution procedure (**IDRP**).
14. Mrs W made an IDRP application on 16 April 2017 and at the same time, she raised a query with CPF regarding the difference between the estimate she received in February 2016 and the pension options she received in September 2016. CPF

explained this on 5 June 2017 and the first stage IDRП was issued to Mrs W on 27 July 2017.

15. The first stage IDRП did not uphold Mrs W's complaint. It determined that Mrs W was receiving the correct benefits under the scheme (it referred to Regulation 21 and 30 of the LGPS (Benefits, Membership and Contributions) Regulations 2007) (**the 2007 Regulations**), but did acknowledge:

"...I note there have been delays and a lack of response to your questions that you have put to the fund. CPF made payment of your lump sum a month after the due date, as a result of having to obtain details of your AVC account. It would have been possible to tell beforehand, that time was needed to obtain this information before CPF could offer pension benefits to you."

It also said that it could make no decisions in relation to maladministration and that this would fall within the remit of this office.

16. Mrs W proceeded with the second stage of the IDRП on 2 August 2017 and stated that her complaint was not about the level of benefits, but about the way in which CPF handled her retirement. The IDRП Stage 2 response was issued on 7 September 2017 and did not uphold Mrs W's complaint on the basis that the correct regulations were being applied.

17. Mrs W subsequently made a complaint to this office.

18. As part of the investigation, CPF provided the following:-

- That its internal procedures and timescales were adhered to and it tries to contact members earlier than one month prior to retirement. It felt that it had breached its own timescales. It apologised for not meeting Mrs W's expectations and offered a "token gesture".
- The "Regulations¹ only permit paying the actual pension and lump sum due to the member rather than the [sic] any perceived financial loss ... I don't feel that maladministration has taken place and I feel that this has also been reflected in both the Stage 1 and Stage 2 processes as neither Stage found that maladministration had taken place." In a later statement, it said that the IDRП followed the regulations correctly and that IDRП cannot rule on maladministration.
- It could not confirm if it had contacted Mrs W one month before her NRD that it could have paid her benefits any earlier than it did, as this was reliant on the AVC provider, but it had paid the benefits within the legal timescales set by The Pensions Regulator.

¹ Regulation 81 of the LGPS Regulations 2013 (**the 2013 Regulations**). See Appendix

Adjudicator's Opinion

19. Mrs W's complaint was considered by one of our Adjudicators who concluded that further action was required by CPF. The Adjudicator's findings are summarised briefly below:-

- CPF had been contradictory in its responses to the complaint and what should have happened before Mrs W's NRD. It was clear that Mrs W was not contacted in the one month prior to her retirement (even though CPF were aware from April 2016 of her intention to retire) and this therefore had a knock-on effect of delaying contact with Mrs W's AVC provider.
- Under the 2013 Regulations, the administering authority has up to one month from the due date (in this case, Mrs W's NRD) to pay the lump sum, and one year to pay the pension. Interest is applied for any delays in payment. CPF paid Mrs W's lump sum more than one month after her NRD and hence it applied interest to the payment. Her pension was paid within one year and therefore no interest is applicable. Therefore, Mrs W received her correct entitlement under the 2013 Regulations.
- However, CPF could have done more to explain this to Mrs W and to manage her expectations as to the timescales it had to pay her benefits. It was clear by the time Mrs W wrote to CPF on 28 August 2016 that she was expecting the funds to be paid on her NRD and CPF ought to have explained to her at that time that it had up to one month to pay her tax free cash lump sum. This could have gone some way to prevent Mrs W's complaint, especially to the point that she has had to complain to this office.
- It was also clear from the correspondence that Mrs W's complaints were not dealt with in a timely manner. Mrs W raised a complaint on 7 November 2016 and this was not responded to in full by CPF until 21 March 2017. Mrs W also raised a query about the difference in her benefits between the estimate and payment on 28 March 2017 and yet did not receive a response until 5 June 2017. In my view, both of these delays exacerbated the complaint and CPF could have been more proactive in trying to resolve the complaint sooner.
- The Adjudicator also felt that the IDRP was unclear and could have done more to explain to Mrs W what she was entitled to under the 2013 Regulations with regard to the delay, rather than referring to the 2007 Regulations, which were not entirely relevant to the point Mrs W was making.
- Overall, the Adjudicator's view was there had been maladministration in that CPF failed to contact Mrs W in the lead up to her NRD and it failed to respond to her complaints and queries in a timely manner. It could have done more to explain its time limits and compensation under the 2013 Regulations and to manage Mrs W's expectations. Therefore, the Adjudicator felt that Mrs W should receive £500 to recognise the distress and inconvenience caused to her. As for any claims of loss

of investment growth, unfortunately, Mrs W is receiving the compensation she is entitled to under the 2013 Regulations.

Ombudsman's decision

20. Mrs W agreed with the Adjudicator's Opinion and CPF did not respond. Therefore, I agree with the Adjudicator's Opinion and uphold the complaint against CPF.

Directions

Within 28 days of the date of this Determination, CPF are to pay Mrs W £500 in recognition of the distress and inconvenience she has suffered.

Anthony Arter

Pensions Ombudsman
21 June 2018

Appendix

The LGPS Regulations 2013

81. -(1) Where all or part of a pension or lump sum payment due under these Regulations (other than a payment due under regulation 17 (additional voluntary contributions)) is not paid within the relevant period after the due date, an administering authority must pay interest on the unpaid amount to the person to whom it is payable.

(2) The relevant period is-

- (a) in the case of a survivor pension, the period ending one month after the date on which the administering authority receives notification of the member's death;
- (b) in the case of any other pension, one year; or
- (c) in the case of a lump sum payment, one month.

(3) The due date is-

- (a) in the case of a pension, the date on which it becomes payable;
- (b) in the case of a lump sum under regulation 33 (election for lump sum instead of pension) the benefit crystallisation event date;
in the case of a death grant, the date on which the member dies or, where
- (c) notification of death is received more than two years after the date of death, the date of notification; or
in the case of a lump sum under regulation 34 (commutation and small pensions)
- (d) the date of the commutation election or, if later, the nominated date within the meaning of paragraph 7(3) of Part 1 of Schedule 29 to the Finance Act 2004 (47) .

(4) Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.