

PENSION FUND COMMITTEE – 4 DECEMBER 2009

INTERNAL DISPUTES RESOLUTION PROCEDURE – PAYMENT OF COMPENSATION

Report by Assistant Chief Executive & Chief Finance Officer

Introduction

1. Under the Local Government Pension Scheme (Administration) Regulations 2008, a Member of the Pension Scheme has a right to raise a complaint in respect of their pension entitlement with their employer (or previous employer where they have left the employment to which the dispute relates).
2. Once the employer has issued their determination of the dispute, the Member has the right to have their dispute reviewed a second time through an independent officer appointed by the Administering Authority. In both the case of a Stage 1 and a Stage 2 determination, the investigating officer is limited to examine whether the dispute has arisen through a breach of the relevant Pension Regulations. Where the dispute is upheld, the investigator can order the re-instatement of the position as if the Regulations had been properly applied.
3. In the event the Member remains unhappy after a Stage 2 determination, they have the right to take their dispute to the Pension Ombudsman. As well as reviewing questions of dispute in respect of the Regulations, the Ombudsman has the power to review questions of maladministration and award compensation accordingly.
4. This report focuses on the situation where the initial review of the dispute finds that whilst no breach of the Regulations has occurred, there is a clear case of maladministration, which has led to financial loss for the Member. The report deals with a specific case and the general principle.

Complaint Raised by Mr P

5. On 2 September, the County Council as a scheme employer received a complaint made by a former employee in respect of his pension provision. This complaint has been reviewed under the relevant Regulatory provisions, and can be summarised as follows:
6. Mr P initially retired from the County Council in 1997 on grounds of redundancy. As part of the retirement package Mr P received 10 compensatory added years.
7. Shortly after his redundancy, Mr P found alternative employment and contacted Pension Services to establish the impact of his new employment on

his pension provision. He was advised that given the circumstances of the new job, there was no impact on his pension.

8. Mr P then began a second new employment in 1999. Pension Services wrote to Mr P to inform him of the maximum salary he could earn before he would suffer a reduction in his pension, and also highlighted the potential for his compensatory pension to be impacted.
9. Mr P then telephoned Pension Services to request clarification of the position in respect of his compensatory pension, and followed up his query in writing. The file notes show that in both the telephone and written response Mr P was told that he could work up to a further 11 years and 99 days before his compensatory pension was impacted.
10. In 2002, Mr P changed jobs again, leaving this employment in May 2009.
11. It was only following the ending of this third employment, that Pension Services first informed Mr P that his employment following his redundancy had indeed impacted on his compensatory pension. In a letter in August 2009, Pension Services informed Mr P that the initial advice he had received was wrong, and that the maximum additional LGPS qualifying service he could accrue before his compensatory pension was impacted was 1 year 265 days. This letter therefore informed Mr P that he had been overpaid compensatory pension amounting to £2,629. This letter also informed Mr P that his on-going compensatory pension would also be reduced, though this would be offset by the new pension now payable in respect of Mr P's subsequent employments.
12. The review of the case has shown that the position as set out in August 2009 is indeed the correct interpretation of the position through the correct application of the Pension Regulations. These Regulations make it clear that where compensatory pension is awarded, the total pension benefit cannot exceed the maximum that the Member could have accrued if not made redundant.
13. In the case of Mr P, at the point of redundancy, there was a further 11 years and 265 days to his 65th birthday. As he received 10 compensatory added years, this left just 1 year and 265 days before his compensatory pension would need to be reduced. It is unclear why the error was made in providing the previous information to Mr P, although it looks like the calculation ignored the compensatory added years.
14. In his letter of complaint, Mr P has stated that he feels it unfair that he now needs to repay the £2,629 which he has received as a result of errors by Pension Services. He accepts the reduction in his compensatory pension going forward.
15. The difficulty here is that in terms of the County Council as employing authority, the Regulations have been correctly applied in the letter of August 2009, and the repayment of the compensatory pension is due. There is no

power to make a decision to over-ride the terms of the Pension Regulations. The service where Mr P was employed before his redundancy is entitled to receive the repayment of the compensatory pension, which they have been meeting since Mr P's redundancy in 1997.

16. However, a review of previous appeal determinations made by the Pensions Ombudsman has indicated that he is likely to find a case of maladministration against the County Council as Administering Authority. Previous cases would also suggest that the Ombudsman would find that Mr P had suffered financial loss and would award compensation accordingly.
17. The basis for this finding is the clear evidence that Mr P received incorrect information to specific questions he raised with Pension Services at a point before he had accrued the 1 year 265 days allowable service. It also seems quite clear from the correspondence that Mr P was keen to take no action that would have reduced his pension in payment, including the compensatory added years. As such, had Mr P been properly informed of the limits to his new service he could have chosen to seek employment outside the public sector, thereby gaining a similar salary and potentially pension without any impact on his LGPS pension. (n.b. The reduction on compensatory pension is based on the opportunity to accrue further LGPS service, not service actually accrued, so Mr P would not have been able simply to opt out of the LGPS to avoid the reduction in his compensatory pension).
18. There therefore seems to be two choices open to this Committee. Firstly it can accept the position as it is, and require Mr P to go through Stage 2 of the pensions complaints process and then on to the Pensions Ombudsman. Whilst it is possible that the Pensions Ombudsman may find against Mr P, or award compensation lower than the £2,629 Mr P is asking to be waived, this route will require both Mr P and the Administering Authority to undertake further work, with a strong likelihood of a public finding of maladministration, with compensation at or above the £2,629 level requested.
19. This therefore suggests a second choice to this Committee to award Mr P compensation, payable from the Administering authority's budget equal to the £2,629 he is required to repay from his compensatory pension. This action would be taken to compromise any future claim for compensation.
20. If the Committee were to agree this action, no money would in fact transfer, but the money moved between the administering authority budget and the service budget accordingly. Under such an option it is not possible to prevent Mr P taking his case to the Pensions Ombudsman (though as the compensation would have restored the position to that Mr P has asked for, it would seem unlikely). However the Ombudsman would take into account any compensation payment already made by the Council in determining any further payment, thereby minimising the risk to the Council of any need to make a duplicate payment.

21. Based on the evidence of this case it is recommended that the Committee follow option 2 above, and award compensation to Mr P of £2,629 to offset the requirement to repay compensatory pension to the same sum.

General Principles for Future Cases

22. The Committee is also asked to consider what process it would wish to follow in future cases. There appears to be three choices available to the Committee.
23. The first option is to have a blanket policy where no compensation is payable in advance of any finding from the Pensions Ombudsman. All complainants would then be forced to go through Stage 2 of the Pensions Complaints process, and then onto the Ombudsman.
24. The second option is to delegate authority to the Assistant Head of Shared Services (Financial Services), who determines all complaints on behalf of the County Council, to award compensation in all cases where he finds a clear case of fault by the County Council either acting as employer, or as administering authority, and where the financial loss resulting from this fault is clearly identifiable. A limit could be placed on this power, initially suggested at £5000. All cases below this sum would be brought to the Committee for information, with cases above this level brought to the Committee for determination. Given the liability issues involved, the authority for the Assistant Head of Shared Services to award compensation would need to be following consultation with both the Chairman of the Pension Fund Committee and the County Solicitor.
25. The third option is to ask the Assistant Head of Shared Services to bring all cases where he believes there is identifiable fault and financial loss to this Committee for determination.
26. It is likely that a number of cases will have to go to the Ombudsman for determination as it is not always possible to determine where the responsibility for mal-administration lies, or to determine the level of compensation. Recent cases determined on behalf of the County Council have included cases where a Member has complained that they have lost money on a transfer of pension due to delays in making the transfer. In such cases it can be difficult to apportion blame between the scheme member, their current employer, their previous pension provider and the administering authority. Even where blame can be apportioned, the payment of compensation by way of a cash payment may not be appropriate, as the loss is in future pension value, which is difficult to determine at the point of complaint.

RECOMMENDATION

27. **The Committee is RECOMMENDED:**

- (a) based on the evidence of this report, and to compromise any future claim against the Council to the Pensions Ombudsman, to award compensation to Mr P of £2,629 to offset the requirement to repay compensatory pension to the same sum; and**
- (b) to determine its policy for future cases, based on the options covered in paragraphs 23-26 above.**

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Assistant Chief Executive & Chief Finance Officer

Background papers: IDR P Complaint & Response as held by Pension Services

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