The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr D
Scheme	Police Pension Scheme (1987) (**the Scheme**)
Respondents	Northamptonshire Police (**NP**) Kier Business Services Limited (**Kier**) Equiniti Paymaster (**Equiniti**)

Outcome

1. I do not uphold Mr D's complaint and no further action is required by NP, Kier or Equiniti.

Complaint summary

2. Mr D's complaint against Equiniti, the former Scheme administrator, is that it misinformed him in a pension quotation that he was entitled to an additional lump sum payment from the Scheme when he reached age 55. Mr D says he has suffered stress and a financial loss as a result of the incorrect information. He considers that he should be paid the additional lump sum or receive a sufficient explanation as to why he is not entitled to it.

Background information, including submissions from the parties and timeline of events

3. 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.

4. Mr D was employed by NP and was a member of the Scheme.

5. Equiniti previously administered the Scheme. In April 2017, Kier (now XPS) took over the administration of the Scheme.

6. On 21 October 2014, Equiniti issued Mr D with a pension estimate (**the 2014 Statement**). It stated that an additional lump sum of £4,589.25 (**the Lump Sum**), after tax, would be payable to Mr D at age 55, in July 2018. It also said that a lump sum of £149,001.49 would be payable at retirement. That is, a lump sum of £152,499.27 less £3,497.78 tax. It added that:

"These amounts are only estimated and are merely intended to give you a broad outline of the benefits that could be payable. The precise amounts will not be calculated until your actual retirement date."

7. Mr D's pension benefits were payable from February 2015. He retired in September 2015, after over 30 years of service.

8. On 8 September 2015, Equiniti wrote to Mr D and enclosed a Retirement Benefits Statement. It said that Mr D's annual pension of £21,167.16 had started on 7 September 2015, and it would pay him a lump sum of £148,424.13 into his bank account. The lump sum was made up of a gross payment of £151,556.87 less tax of £3,132.74.

9. In October 2017, Mr D said that he became aware of an issue where a former colleague had also been quoted an additional lump sum but was later told by Equiniti that it was not payable. However, on appeal, this decision was overturned, and his colleague was paid the additional lump sum in full. On 8 December 2017, Mr D wrote to Equiniti to check whether it would pay him the Lump Sum at age 55, as stated in the 2014 Statement.

10. On 12 December 2017, NP responded to Mr D, having liaised with both Equiniti and Kier. The two responses were:-

Equiniti's response

"I can advise that Mr [D] was sent an estimate of benefits in October 2014 based on his salary at that time when an earlier year of pensionable pay was higher and used in the calculation giving an additional lump sum payable at 55. I have attached a copy of the covering letter sent with this estimate which clearly states "These amounts are only estimated and are merely intended to give you a broad outline of the benefits that could be payable. The precise amounts will not be calculated until your actual retirement date."

Kier's response

"Under the Pensions Increase Act, when a member is not eligible for [a] pensions increase when the pension award becomes payable (e.g. they are under 55) the current rate of pension is increased to take account of all notional increases which the pension has attracted since the *beginning date of the pension, when they meet a qualifying condition for payment (usually age 55). Pension increase is also due on the lump sum and is calculated from the beginning date to the payable date of the lump sum (not the payable date of the PI).

*Where the best 12 months, used in that calculation of benefits, does not coincide with the final year of membership, the beginning date for pension increase is taken to be the day after the end of the 12 month[s] period used in the calculation rather than the end of service.

With regards to Mr [D], we do not believe he is entitled to any further payments because his final years['] pay was used to calculate his retirement benefits."

11. On 8 February 2018, Mr D wrote to NP and complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

12. On 7 March 2018, NP issued its stage one IDRP response. It said that Mr D's query was complex, and concerned an area of pension regulations that was rarely used. So, it had sought further clarification. It confirmed that Mr D was not entitled to the Lump Sum and explained that:-

    - Equiniti had issued Mr D with the 2014 Statement based on the information available at that time.
    - Kier had re-confirmed that, based on Mr D's actual retirement date of 7 September 2015, his pension arrangements did not meet the requirements for the Lump Sum.
    - Mr D's final salary was used to calculate his retirement benefits.
    - Kier had confirmed that the pension benefits in the 2014 Statement were estimates and not final until all administration had been completed and exact dates, values and final service details completed.
    - While there was a difference between the 2014 Statement and the Retirement Benefits Statement issued in September 2015, Mr D had received his full entitlement under the Scheme.
    - The lump sum Mr D received was the full amount legally payable from the Scheme and he continued to receive the full annual pension.
    - It did not uphold Mr D's complaint.

13. On 12 March 2018, Mr D wrote to NP and said that its response did not address why he had received the 2014 Statement that stated he was due the Lump Sum. He asked NP to reconsider his complaint under stage two of the IDRP.

14. On the same day, NP responded and said that, following its telephone conversation with Mr D, it would ask for additional clarification on the details of his case and then respond.

15. On 9 October 2018, as Mr D had not heard from NP, he wrote again and asked for his complaint to be reconsidered under stage two of the IDRP. He explained that:-

    - NP had explained his position and provided copies of his payslips for the previous three years to support its interpretation. However, it was still not clear why Equiniti had advised that he was entitled to a payment for the decision to subsequently be reversed by Kier.

- NP had not provided details of the statutory regulations or any other clear rationale why he was not entitled to the Lump Sum.
- Other members, who were misinformed that they would receive an additional lump sum, eventually received the amount quoted to them. While he accepted that it would not be possible to comment on other cases, he would like to understand why he had been treated differently.

16. On 11 January 2019, NP issued its stage two IDRP response. It apologised for the delay and for not updating him while it reviewed his complaint. It explained that, given the nature of Mr D's complaint, it was important to take some time to gain a full understanding of the background and legislative complexities. It explained that:-

- The Lump Sum and his entitlement under the Scheme were based on the highest gross salary in the final year, or preceding two years, before retirement.
- In accordance with its practice, the Lump Sum quoted was an estimate and Equiniti had used the latest salary information available when it produced the 2014 Statement. Mr D's gross salary, used to calculate the pension figures in the 2014 Statement, was lower than it had been in the previous two years.
- In contrast, Mr D's final pension calculation in 2015 was based on his final salary, because his salary at that time was the highest salary.
- It had checked the basis of the calculations used for the 2014 Statement and the Retirement Benefits Statement, and both were correct.
- Pensions are increased annually by inflation. The increases due between the date of retirement and age 55 were applied once the member reached age 55. In Mr D's case, the pension uplift at age 55 was correctly calculated.
- An additional lump sum becomes payable at age 55 only under the following scenarios: the individual is below age 55 when the pension becomes payable; pension increases are due between the date of retirement and age 55; and the pension calculation is not based on the member's final salary.
- All three conditions were met at the time the 2014 Statement was calculated, so Equiniti included the Lump Sum in the quotation. However, when Kier calculated Mr D's final pension figures, his final salary was the highest salary. So, the Lump Sum was not payable.
- Mr D's actual lump sum was higher than it would have been under the 2014 Statement.
- It was normal for an individual's pension estimate to differ from the final entitlement and Equiniti explained this on the 2014 Statement.
- It had reviewed Mr D's pension benefits and he had received his correct entitlement under the Scheme.

17. On the same day, Mr D wrote to NP and said he was disappointed that there was a delay in its response. Between 14 January 2019 and July 2019, Mr D continued to seek clarity from NP regarding the payment of the Lump Sum.

18. On 18 July 2019, NP wrote to Mr D and concluded that:-

- Kier had correctly calculated the final calculation of his pension and lump sum. It was confident that all the pension payments it made to Mr D were accurate.

- Equiniti did not explain in the 2014 Statement why it had included the Lump Sum.

- When Mr D queried the Lump Sum, it did not explain its inclusion in the 2014 Statement clearly and in a helpful manner.

- Equiniti had included the Lump Sum element in the 2014 Statement based on the information it held at the time. However, it was not able to provide the exact details it used in its calculation.

- It did not have a copy of the calculation of Mr D's pension estimates from Equiniti, but Equiniti had explained that:

  "There are a number of contributory factors to calculating a lump sum one of which being the lump sum factor. For [a] member who meets the criteria of being entitled to the maximum commutation, the lump sum is based on 25% of their pension multiplied by a lump sum factor. The lump sum factors which are supplied by GAD reduce as an officer['s] age increases in years and months so it would indeed be possible for this officer's lump sum to reduce if they retired at a later date."

19. On 25 July 2019, Mr D wrote to NP and asked why it had not paid him the Lump Sum at age 55. He also said that it should provide a copy of the calculations which had led Equiniti to believe that he was previously entitled to the Lump Sum.

20. On 11 August 2019, NP responded to Mr D and said:-

- The Lump Sum was an estimate and not part of Mr D's final pension calculation. It was based on Mr D's pay records at the time. However, the conditions, which would have given rise to an entitlement to the Lump Sum, were no longer present when he retired. So, it did not form part of his final pension calculation. It had no reason to believe the pension Mr D received was incorrect.

- Equiniti was not able to provide the details that Mr D had asked for. However, it had explained that it should have sent the calculations along with all historical pension records to XPS. Unfortunately, Mr D's calculations were not on file.

21. On 14 August 2019, Mr D wrote to NP and said that it did not address his questions. He repeated his request for a copy of the calculations of the figures in the 2014 Statement so that he could understand why he was no longer entitled to the Lump Sum.

22. On 30 August 2019, NP responded to Mr D. It said that it had asked XPS to provide him with some additional calculations urgently. It offered Mr D the following explanations:-

- **Why Mr D was eligible for the Lump Sum in 2014**

  Under the Police Regulations 1987 section G1 (4) (**the Regulations**), Mr D was entitled to the Lump Sum. This was because the pensionable salary that Equiniti had used to calculate the figures in the 2014 Statement was not the highest in the preceding three years.

- **Why Mr D was no longer eligible for the Lump Sum**

  His final calculation was based on his actual final pensionable pay of £42,334.32, which was higher than the salaries in the two preceding years, by around £100 to £200. So, according to the Regulations, as Mr D's final salary was higher, he was no longer eligible for the Lump Sum.

- **Basis of the data**

  The preceding 38 months' payslips confirmed that, as a result of the 1% annual pay award in September 2013, 2014, and 2015, and the decreasing eligible allowances, Mr D's pay was slightly higher in the final year of his employment.

23. On 15 and 22 November 2019, NP wrote to Mr D and enclosed a copy of the calculation from XPS covering his final retirement figures. It apologised for the delay in providing the calculations. It said that XPS had separately reviewed a calculation in respect of a member who had the same pay history as Mr D. It reiterated the explanations provided in its response of 30 August 2019.

Summary of NP's position

24. NP said:-

- Pension calculations under the Scheme were based on the highest average pensionable pay in the previous 3 years. The amount under dispute related to an additional lump sum payment that could have become due at age 55 only if the pension calculation was based on a pay figure lower than the final salary.

- It had explained to Mr D why the Lump Sum was no longer payable to him at age 55. There was no explanation provided to assist Mr D in understanding the reasons why he had been told the Lump Sum was payable to him at age 55.

- The 2014 Statement was based on Mr D's salary at the time, when his pensionable pay, in an earlier year, was higher.

- For Mr D's final pension calculation, his final year's pay was used to calculate his retirement benefits.

The Pensions Ombudsman's position on the provision of incorrect information

25. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, such as retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, meaning those based on correct information accurately reflecting the scheme rules.

26. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.

27. The above sets out the Ombudsman's views very generally on the application of, negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

28. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by NP, Kier, or Equiniti. The Adjudicator's findings are summarised below:-

- NP explained that Mr D was not entitled to the Lump Sum as his final salary at the time he retired was higher than the salary Equiniti had used in the 2014 Statement. It also provided Mr D with a copy of his final pension calculation. The Adjudicator was of the opinion that the 2014 Statement was not inaccurate because it was based on the correct information at the time it was produced. So, there had been no maladministration.

- Furthermore, the 2014 Statement said that the amounts quoted were estimated and intended to give the member a broad outline of the benefits that might be payable. The 2014 Statement stated that the precise amounts would not be calculated until the actual retirement date. The Adjudicator acknowledged that Mr D would have been disappointed because he was no longer eligible to receive the Lump Sum at age 55. However, the Adjudicator took the view that it was not reasonable for him to have relied on the 2014 Statement as the amounts were not guaranteed.

- Having reviewed the evidence, the Adjudicator was satisfied that NP had provided Mr D with a sufficient explanation as to why he was not entitled to the Lump Sum. While the Adjudicator appreciated Mr D had expected the Lump Sum when he reached age 55, NP can only pay Mr D's correct entitlement under the Scheme, including the Lump Sum where applicable, and in accordance with the Regulations.

- Mr D said he has suffered stress as a result of receiving incorrect information. The Adjudicator accepted that Mr D may have suffered distress and inconvenience in dealing with the matter. However, the fact remained that he was not provided with incorrect information in the 2014 Statement. The 2014 Statement was accurate at the time of production. The passage of time, and events which followed, changed his entitlement.

- Mr D had also complained about the length of time taken for NP to consider his complaint. The Adjudicator noted that NP had said Mr D's query was complex, and that it had sought further clarification. Furthermore, the Scheme administration transferred from Equiniti to Kier. So, NP had liaised with both administrators to attempt to resolve Mr D's complaint. Mr D had been made aware of this. The Adjudicator did not doubt that these factors caused delays or obscurity in NP's responses to Mr D. However, in the Adjudicator's view, the delays were not unreasonable in the circumstances.

29. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

30. Mr D provided his further comments which do not change the outcome. In summary, he said:-

- His complaint has always been about his need for a satisfactory response to the following three questions:-
  - Can details of the calculation be provided to confirm why he was quoted a payment of £4,589.25 payable from his 55th birthday?
  - Can details of the calculation be provided to confirm why he was subsequently no longer entitled to this payment?
  - Can an explanation be provided to show why his final gross lump sum of £151,556.87, quoted as at 8 September 2015, was lower than the figure of £152,449.27, quoted as at 17 February 2015?

- The salary figures used in the calculation of his benefits, which had been provided in a spreadsheet, did not stand up to scrutiny.

- Little weight had been given to the experience of a former colleague who had also been quoted an additional lump sum, only to be told later by Equiniti that the lump sum was not payable. On appeal, this decision was overturned, and the additional lump sum was paid in full.

- An NP employee, who played a significant role in his case, openly communicated to another employee that under no circumstances was a payment to be made to him.
- Neither Equiniti nor Kier hold a copy of the calculations underlying the 2014 Statement. He questioned whether this amounted to maladministration.
- Equiniti had not explained in the 2014 Statement why it had included the Lump Sum. He questioned whether this also amounted to maladministration.

31. On 19 January 2022, NP shared a copy of the Government Actuary's Department's "Commutation on Retirement" guidelines (**the Guidelines**) that were in force at the time the 2014 Statement was produced. Where the pensionable pay is not the final salary, Section 2.10 of the Guidelines applies. This states that:

    "In these cases, the lump sum (as calculated in accordance with the PPS regulations) should be split between the two payment dates as follows:

    a) Lump sum payable when pension commences […]

    b) Lump sum payable at age 55".

32. On 29 April 2022, NP confirmed that the pay figures used in the calculation of Mr D's benefits had been checked by payroll specialists on at least two separate occasions. No errors had been identified.

33. I note the additional points raised by Mr D, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

34. Mr D's complaint is that Equiniti informed him that he was entitled to the Lump Sum of £4,589.25 from the Scheme when he reached age 55. He contends that NP should pay him the Lump Sum or explain why he is no longer entitled to it.

35. I shall look initially at the three main questions that Mr D has said form the basis of his complaint. NP, Equiniti and Kier have all confirmed that they are unable to locate a copy of the calculation that underlies the figures in the 2014 Statement. I appreciate that this will be disappointing to Mr D and is unfortunate. I note that there has been a change of administrators since the 2014 Statement was issued. This is likely to have hampered attempts to locate the information. In the absence of evidence to support that the underlying figures are incorrect, I do not agree that this amounts to maladministration. In taking this view, I have considered the fact that the 2014 Statement was only an estimate of the benefits available to Mr D.

36. In a number of its responses, NP has provided an explanation of why the 2014 Statement indicated that Mr D was entiltled to an additional Lump Sum at age 55, which was not subsequently reflected in the final retirement figures that he was quoted. The Guidelines help provide additional clarification in this respect.

37. The critical difference between the information used to calculate the figures in the 2014 Statement and that used for the final retirement figures is the period over which the salary information was taken. In both cases, pensionable pay was based on the highest salary figure in the preceding three years. In the case of the final retirement figures, it was the final salary that was the highest. However, when calculating the 2014 Statement figures, based on the information available at that time, the highest figure was Mr D's salary in March 2013, before the date of retirement.

38. Turning to the Guidelines. Where the pensionable pay is the final salary, section 2.5 applies. This section confirms that a single lump sum is payable at the point of retirement.

39. Where the pensionable pay is not the final salary, as was the case for the 2014 Statement, section 2.10 of the Guidelines applies. This confirms that both a lump sum at the point of retirement and a lump sum at age 55 are payable.

40. I find that it was correct that Mr D was quoted the Lump Sum at age 55 in the 2014 Statement but not in the statement showing the final retirement figures with which he was provided.

41. Mr D has asked for an explanation to help him understand why the lump sum he was quoted in the 2014 Statement was higher than that in his final retirement figures. Without access to the calculation that underlies the 2014 Statement, it is difficult to provide a definitive explanation of why this was the case. However, as can be seen from the Guidelines, the factors used to convert pension to lump sum decrease as a member gets older. So, the lump sum available to Mr D at the time of the 2014 Statement for each £10 per annum of pension he surrendered would be higher than at his final retirement date.

42. Mr D has expressed concern about the accuracy of the salary information used to calculate his benefits. NP has confirmed that the salary information has been checked at least twice by its payroll experts. In the absence of any evidence to the contrary, I see no reason to doubt these figures.

43. Mr D has mentioned that a former colleague, who was also quoted an additional lump sum, only to be told by Equiniti that the lump sum was not payable, had the decision overturned on appeal. Consequently, the additional lump sum was paid in full. For data protection reasons, it is not possible for me to consider the benefits paid to another member of the Scheme in my investigation of Mr D's complaint. Furthermore, the calculation of benefits is a complex matter. The circumstances involved in Mr D's colleague's case may not be identical to his, so a direct comparison may not be possible.

44. I have noted Mr D's comments concerning what he says was communicated to another employee in relation to his case. It is not possible for me to comment on conversations that may or may not have taken place. There is no evidence of what was said by the parties, there is also no evidence of the context in which the alleged comments were made. In a case like this, what is key is that the member is paid the

benefits to which they are entitled to under the Regulations that govern the Scheme. On reviewing the evidence, I find that Mr D was not entitled to the Lump Sum payment.

45. Mr D has asked whether the failure on the part of Equiniti to explain, in the 2014 Statement, why it had included the Lump Sum amounts to maladministration. I do not agree that this amounts to maladministration and it was only an estimate. The benefit provisions of the Scheme are complex, and it is not always feasible to explain all aspects in a quotation.

46. I do not uphold Mr D’s complaint.

Anthony Arter

Pensions Ombudsman
24 May 2022