

Ombudsman's Determination

Applicant	Mrs R
Scheme	Police Pension Scheme (the Scheme)
Respondents	Bedfordshire Police XPS Administration (XPS)

Outcome

1. I partly uphold Mrs R's complaint and to put matters right, Bedfordshire Police shall pay Mrs R £2,000. No further action is required by XPS.

Complaint summary

2. Mrs R's complaint is that Bedfordshire Police sent her incorrect annual statements which overstated her pension lump sum. Mrs R says she has suffered a financial loss of £30,000 and that Bedfordshire Police should honour the higher lump sum.

Background information, including submissions from the parties

3. As relevant, extracts from The Police Pensions (Pension Sharing) Regulations 2002 (the **Pension Sharing Regulations**), are provided in the Appendix.
4. Mrs R is a pension credit member of the Scheme as the former spouse of a Bedfordshire Police employee who was a member of the Scheme.
5. Between 2011 and 2015, Bedfordshire & Hertfordshire Police Pension Administration (**Bedfordshire PPA**), the then Scheme Administrator, issued Mrs R with an Annual Benefit Statement (**ABS**). The ABS' erroneously referred to her as a deferred pensioner, instead of a pension credit member, and overstated her lump sum entitlement.
6. In late 2015, Mrs R received an ABS (the **2015 ABS**) which said:-
 - Her pension was payable from August 2019, when she reached age 60.
 - As of 7 April 2015, if she took the maximum lump sum, the benefits payable at retirement would be:
 - an annual pension of £9,807.11; and

- a lump sum of £60,803.96.
7. On 31 March 2016, Bedfordshire PPA wrote to Mrs R and said that from 1 April 2016, Kier would administer the Scheme. The letter also stated:

“The transfer will not change any of your pension rights or the amount you are due to receive, it simply allows us to ensure you receive a high quality pension service.”
 8. In August 2016, Kier sent Mrs R an ABS which said that her annual pension payable from August 2019 would be £13,076.14. It did not provide details of the lump sum available to her.
 9. In 2018, Mrs R decided to purchase a property abroad and took out a £30,000 loan to purchase furniture.
 10. In May 2019, Mrs R contacted XPS, the current Scheme Administrator, and asked for a copy of her “final” ABS before her due retirement date.
 11. On 3 June 2019, XPS provided Mrs R with the correct lump sum figure, which was £31,341.55.
 12. In response, Mrs R said:-
 - The 2015 ABS stated that her lump sum would be £60,803.96.
 - The lump sum stated in each ABS had increased from £54,414.49 in 2011 to £60,803.96 in 2015.
 - She was concerned with the lower figure and asked for it to be corrected within seven days.
 13. XPS responded to Mrs R and explained that:-
 - Bedfordshire PPA had not taken into account that Mrs R’s benefit entitlement was the result of a Pension Sharing Order (**PSO**).
 - The ABS’ that she had received up to 2015 were incorrect because she was a pension credit member, not a deferred pensioner.
 - The maximum lump sum she could receive was limited to 2.25 times the annual pension available to her at retirement age.
 14. On 18 June 2019, Mrs R wrote to XPS and said:-
 - She had based her retirement plans on the figures quoted in the ABS provided by Bedfordshire PPA between 2011 to 2015.
 - The figures were guaranteed.
 - From 2016, the ABS’ no longer showed the lump sum available to her.

- Bedfordshire PPA had implemented the PSO, so it was concerning that it had issued her with incorrect ABS’.
 - She purchased a property abroad in 2018 and told the lender that she would receive at least £60,000 as a lump sum in 2019. Had she known the correct lump sum, she would not have purchased the property.
 - The error had caused her a great deal of stress, so XPS and Bedfordshire Police should:
 - pay her the overstated lump sum; or
 - pay her the difference between the overstated lump sum and the correct lump sum, with an additional 20% to cover the tax liability.
15. In response, XPS explained that while it sympathised with Mrs R, she was only entitled to the correct level of benefits payable in accordance with the Scheme Regulations. If Mrs R, remained unhappy, she could raise a complaint under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
16. In July 2019, XPS updated Bedfordshire Police on Mrs R’s position.
17. On 20 July 2019, Mrs R raised a stage one IDRP complaint and provided a timeline of events. In addition to the issues detailed in paragraph 14 above, she also complained that:-
- She was upset with the response to her complaint in June 2019.
 - XPS had failed to provide her with the IDRP form, as agreed, so she had to get in contact again to request it.
 - During a telephone conversation on 10 July 2019, XPS had “reduced her expectations” of the potential outcome of her complaint. It had also failed to consider the financial loss that she had suffered which, she believed, was around £30,000.
 - She had not received the level of service that she expected.
18. Mrs R included supporting documentation with her stage one IDRP application, including the loan agreement and the contract for her property abroad.
19. In August 2019, XPS sent Mrs R confirmation of the benefits that would become payable that month: £12,354.63 as an annual pension and £31,341.55 as a one-off lump sum.
20. On 18 September 2019, Bedfordshire Police provided its stage one IDRP response. In summary, it explained that:-

- Mrs R was a pension credit member, not a deferred pensioner, of the Scheme. As such, the ABS she had received between 2011 and 2015 were incorrect because she was not entitled to receive a higher lump sum.
 - It accepted that Bedfordshire PPA had made errors on Mrs R's pension record but the errors were corrected before her benefits became payable.
 - Mrs R was unable to take her benefits in the way she had hoped, but her total entitlement remained the same.
 - It offered her a payment of £750, in full and final settlement of her complaint.
21. Mrs R rejected the offer and asked for her complaint to be investigated under stage two of the IDRP. She said:-
- She was unhappy with the response.
 - Bedfordshire Police should not have been appointed to make the stage one IDRP decision because she had asked for an independent investigation.
 - She had suffered a financial loss because she had received a lump sum that was around £30,000 less than she was led to believe she would receive.
 - The letter she received on 31 March 2016 said that the amount she was due would not change. So, this, to her, was a guarantee of the lump sum amount.
22. On 27 September 2019, Bedfordshire Police acknowledged Mrs R's complaint. As Mrs R complained that the investigation was not completed by an independent party, it gave her the opportunity to have her complaint investigated by a Chief Officer from a neighbouring force.
23. Mrs R does not appear to have accepted the offer for a neighbouring force to provide a stage two IDRP response.
24. On 27 November 2019, Bedfordshire Police provided its stage two IDRP decision. In summary, it upheld the stage one IDRP decision but increased the offer of compensation to £2,000.
25. Mrs R accepted that the £2,000 offer for the non-financial loss was reasonable, but remained dissatisfied because the financial loss had not been addressed.

Adjudicator's Opinion

26. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Bedfordshire Police or XPS Administration. The Adjudicator's findings are summarised below:-
- The provision of incorrect information amounted to maladministration.

- As maladministration had occurred, the normal course of action would be to put Mrs R back in the position she would have been in had she been provided with the correct information. This did not mean paying Mrs R a higher lump sum than she was entitled to receive as a pension credit member.
 - The ABS did not explicitly guarantee the amounts, so it was not reasonable for Mrs R to act as she did.
 - In accordance with the Pension Sharing Regulations, Mrs R was only entitled to receive 2.25 times her annual pension as a lump sum because she was a pension credit member.
 - It was difficult for Mrs R to claim direct reliance on the incorrect information because she had entered into financial commitments before the pension benefits had been paid.
 - The lump sum that Mrs R received was approximately the same amount as the loan she took out, so, the Adjudicator did not believe that Mrs R could make a legitimate claim for actual financial loss.
 - Mrs R had not suffered a £30,000 financial loss because the overall pension value remained unchanged. Instead, she was unable to take her benefits in the way that she had hoped.
 - Mrs R had suffered non-financial injustice and Bedfordshire Police's offer of £2,000 was reasonable in the circumstances.
27. Bedfordshire Police accepted the Adjudicator's Opinion, but it said that its offer of £2,000 was made "in full and final settlement" of the complaint. Should Mrs R request that I make a Determination, it would withdraw its offer.
28. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments which do not change the outcome. She said:-
- The Adjudicator's Opinion was in direct conflict with the "wrong or misleading information factsheet" provided by my Office.
 - Bedfordshire Police and the Adjudicator had failed to address her immediate financial loss.
 - She had provided sufficient evidence to show that she had relied on the information she was given.
 - She did not understand why the Adjudicator believed it was unreasonable to rely on "written statements, letters and lack of any disclaimers."
 - She had considered her financial position before she purchased the property abroad.

- The letter she received on 31 March 2016 informed her that the amount she was entitled to would not change.
- It was distasteful and wrong of the Adjudicator to refer to case number PO-4242, which had been taken out of context.
- She had incurred a financial loss because she had planned to repay the loan early, with no early repayment penalty, using the lump sum.
- It would take around 20 years for her to benefit from the extra £30,000 that she expected to receive as a lump sum.
- The Adjudicator should have considered case number PO-84553/1, which was more relevant in the circumstances. While the Adjudicator had correctly stated that the applicant in this case was not entitled to the overstated lump sum, she failed to disclose the reason for this, or that the previous Pensions Ombudsman had made an award outside of the relevant regulations.
- It was unfair of Bedfordshire Police to withdraw its offer if she asked for a binding Determination.

29. I note the additional points raised by Mrs R but I agree with the Adjudicator's Opinion.

Ombudsman's decision

30. I will initially respond to Mrs R's comments on the Adjudicator's Opinion and the previous cases referred to.
31. Mrs R says that the Adjudicator's Opinion does not follow any discernible logic and is inconsistent with factsheets and guidance provided by my Office. Each case is assessed on its own merits and my Adjudicators have delegated authority to give opinions on the merits of complaints. In this case, I agree with the Adjudicator's Opinion which is in line with my position on the provision of incorrect information.
32. Mrs R is unhappy that the Adjudicator referenced the previous Ombudsman's statement, in case PO-4242, that it was problematic for applicants to claim a direct reliance on incorrect information before any pension benefits had been paid. I do not believe that it was wrong of the Adjudicator to refer to the previous Ombudsman's stance, nor that the intention was to liken the merits of Mrs R's complaint to those of Mr D's.
33. Mrs R compares her complaint to Mrs T's case, PO-84553/1, another Police Pension Scheme complaint made following the provision of incorrect information. To summarise Mrs T's complaint briefly, she was incorrectly informed that she was entitled to a lump sum so she booked a holiday and cashed in her premium bonds. She planned to replace the premium bonds with the lump sum and, in an attempt to mitigate the loss, she had continued working after she planned to retire. The previous Ombudsman found that while Mrs T was not entitled to the lump sum, she had relied

on the incorrect information to her detriment and she should be put back in the position she would have been in had she received the correct information. As such, he directed the respondent to pay Mrs T £2,500 for the financial loss that she had suffered.

34. In Mrs R's case, I am not convinced that she would not have purchased the property abroad had she been made aware of the correct lump sum. Further, I have seen no evidence that Mrs R has sought to mitigate her position in any way. The property she purchased abroad remains an asset which could be sold to offset the perceived shortfall in benefits.
35. Turning now to her complaint, Mrs R believes that the letter she received on 31 March 2016 guaranteed that the amount she was entitled to would not change. The letter Mrs R refers to was to notify members of a change to the Scheme Administrator. I do not believe that the purpose of the letter was to guarantee figures quoted in any particular ABS which members may have received. In context, and to the casual reader, the purpose of the letter would seem to be to notify members of a change to the Scheme Administrator and to reassure members that their entitlement to benefits from the Scheme would not change. I find that Mrs R has misinterpreted the letter as a categorical guarantee of the figures quoted, which is regrettable, but it does not entitle to her to receive a payment not covered by the Scheme Regulations.
36. There is no dispute that Mrs R received incorrect information over a number of years. In this case, the provision of incorrect information amounts to maladministration. The normal course of action would be to put Mrs R back in the position she would have been in had Bedfordshire Police issued correct ABS'. It is not to put her in the position she would have been in had the incorrect information been correct.
37. Bedfordshire Police has accepted that it provided Mrs R with incorrect ABS' between 2011 and 2015 which will have disadvantaged Mrs R. While maladministration has occurred, I am satisfied that Mrs R is receiving the correct level of benefits that she is entitled to in accordance with the Pension Sharing Regulations and the Scheme Regulations. I will therefore consider whether Mrs N has suffered a financial or non-financial loss as a result of the maladministration.
38. In order to conclude that an applicant has suffered a direct financial loss as a result of incorrect information they have received, I must be satisfied that, on the balance of probability, they reasonably relied on the incorrect information to their detriment when making decisions and that they would have acted differently, had they known the correct position. The onus then is on the applicant to support their claim.
39. Mrs R argues that she relied on the ABS' and it was reasonable for her to do so. The purpose of an ABS is to provide a member with an estimate of their pension benefits when they reach retirement age. I understand that Mrs R needed something to base her retirement plans on, however, it was not reasonable to rely on the ABS' to the degree that she did because they did not provide a guarantee of benefits.

40. Mrs R says that she purchased a property abroad in 2018 and took out a loan for furniture later that year with the expectation that she could use the £60,000 lump sum from Bedfordshire Police to repay, at least, some of the borrowing early. In this case I am not convinced that, on the balance of probability, Mrs R would have made different decisions to those that she did. Mrs R says that she considered her financial position before she entered into these financial commitments, including other provisions in addition to the pension from Bedfordshire Police. However, the fact remains that she purchased the property and took the loan before her benefits had been paid. I agree with the Adjudicator that it is difficult to claim detrimental reliance when the commitments had been entered into around a year before any lump sum was due to be paid. I also note that Mrs R now owns the property which remains a financial asset which she could sell to offset the shortfall in pension income.
41. I understand that Mrs R is disappointed that she is not entitled to the higher lump sum that she was misquoted, but the overall value of her benefits remains the same. Mrs R says that it will take around 20 years for her to benefit from the extra £30,000 that she expected to receive as a lump sum, but Bedfordshire Police has to pay her benefits in accordance with the Pension Sharing Regulations and the Scheme Regulations. It has no discretion to pay her benefits in a way that she is not entitled to receive them.
42. Mrs R refers to an “immediate financial loss” because the lump sum is around £30,000 less than she expected. I understand Mrs R’s assertion, but I do not agree that she has suffered an actual financial loss, instead she has suffered a loss of expectation which is a non-financial injustice.
43. My awards for non-financial injustice are intended to acknowledge the distress and inconvenience that an applicant has suffered as a result of maladministration. In Mrs R’s case, Bedfordshire Police offered £2,000 in full and final settlement of her complaint. Following the Adjudicator’s Opinion, and Mrs R’s rejection of it, Bedfordshire Police withdrew its offer, which it was within its rights to do. However, I am of the view that the offer of £2,000 should remain as it is a reasonable award in respect of the severe maladministration that has occurred over several years. I do not consider it appropriate to direct a higher award.
44. I partly uphold Mrs R’s complaint.

Directions

45. Within 21 days of the date of the Determination, Bedfordshire Police shall pay Mrs R £2,000 for the non-financial injustice that she has suffered.

Anthony Arter

Pensions Ombudsman

1 September 2021

Appendix

The Police Pensions (Pension Sharing) Regulations 2002

46. As relevant, regulation M1, 'Pension credit member's entitlement to pension' provides:

"(1) Subject to regulations M2 and M3 (commutation), a pension credit member is entitled to a pension for life which becomes payable—

(a) when he attains normal benefit age, or

(b) if it is later, when the pension sharing order under which he is entitled to the pension credit takes effect."

47. As relevant, regulation M2, 'Commutation: general provision' provides:

"(3) But the lump sum may not exceed the annual rate of the pension as at the time when it first becomes payable (disregarding any reduction under this regulation or any other provision of the Scheme), multiplied by 2.25."