

Ombudsman's Determination

Applicant	Mr N
Scheme	Metropolitan Police Pension Scheme (the Scheme)
Respondents	Equiniti (the Administrator) Metropolitan Police Service (the Employer)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Administrator or the Employer.

Complaint summary

2. Mr N complained that the Administrator used a threat and deceit to obtain permission to access confidential information about Scheme members. He is of the view that the Administrator requested access to more information than was necessary for its purposes.
3. Mr N would like the Administrator to withdraw the letter in which it requested the information (**the Letter**), issue a replacement letter, and destroy the relevant signed consent forms.

Background information, including submissions from the parties

4. 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.
5. Mr N was a member of the Scheme, a defined contribution occupational pension scheme. He retired on medical grounds.
6. In November 2019, the Administrator sent Mr N the Letter.
7. The Letter stated that because of the Police (Injury Benefit) Regulations 2006 (**the 2006 Regulations**), in certain circumstances, specific relevant benefits from the Department for Work and Pensions (**DWP**) must be deducted from an injury pension. It stated that from 10 February 2017, these benefits include Employment and Support Allowance (**ESA**). It asked that in order to determine whether the recipient is affected,

the recipient complete and return the declaration form (**the Declaration Form**) attached to the Letter along with any welfare benefits documents they had. The Letter also asked that the recipient sign a consent form (**the Consent Form**) giving the Administrator permission to obtain information about them from the DWP. The Letter stated that any delay in returning the Consent Form could result in a pension overpayment.

8. The Declaration Form stated:

“I understand that benefits awarded to me by the Department for Work and Pensions (DWP) in respect of the injury at work for which I have been awarded a Police injury pension must be deducted from that pension. I undertake to inform Police Pensions of ALL DWP awards and any changes to those awards. I have indicated below whether or not I have received any of the relevant benefits since the date of my retirement (including benefits awarded before and still in payment after my retirement).”

9. This was followed by a table in which recipients were to indicate which welfare benefits they had received.

10. The Consent Form stated:

“I hereby give my authority to Department for Work and Pensions to disclose to Equiniti the details of any awards made to me now or in the future in respect of the injury that resulted in my medical retirement from the Metropolitan Police Service.”

11. This was followed by a box in which recipients were to provide their signature.

12. On 6 November 2019, Mr N emailed the Administrator his copy of the Letter with the completed Declaration Form and signed Consent Form.

13. On 8 November 2019, Mr N sent the Administrator two emails. He requested that his signed Consent Form be destroyed with immediate effect and stipulated that he withdrew the authority it had given the Administrator. He also made a formal complaint. He complained that the Administrator had requested more information than it required, and that the Letter contained a threat to stop the recipient's pension if they did not sign the Consent Form. He said he had been given legal advice that he should not have received the Letter.

14. On 9 December 2019, the Employer asked the Administrator to change the format of the Letter by separating the Declaration form and the Consent Form. The Employer said this was to address concerns from Scheme members that they may be unknowingly led into signing the Consent Form.

15. On 17 December 2019, the Administrator emailed Mr N. It said:

“...please accept my sincere apologies for the stress and frustration you have been caused, firstly by the initial letter sent as a result of a mailing on (sic) behalf of the Metropolitan Police and secondly by our lack of response to you.”

16. On 5 January 2021, Mr N submitted a complaint about this matter to the Information Commissioner's Office (**the ICO**) by email.
17. On 22 March 2021, Mr N emailed the Employer, requesting that it stop accessing data held about him by the DWP.
18. On 6 April 2021, in response to Mr N, the Employer stated:

“I can confirm that the DWP letter of authority that you provided to Equiniti regarding your injury pension has been destroyed, as mentioned in my email to you of 23rd October. Also, Equiniti will not be writing to the DWP in the future regarding you.

I would however mention that, as is the case for all recipients of a police injury pension, the onus is on you to let Equiniti know if you did start to receive, from the DWP, any deductible benefit.”

19. On 5 May 2021, the ICO emailed Mr N and stated:

“We understand MPS Pensions Office has responded and explained that the Equiniti letter has been destroyed and that it will not be corresponding with the Department for Work and Pensions regarding you. In light of the above, we do not require further action from the Metropolitan Police Service (MPS) at this time.”

Summary of Mr N's position

20. The Administrator was phishing. The Administrator asked for information it was not entitled to receive. It obtained consent to request Scheme members' information from the DWP through deceit and a threat that their pension would otherwise be stopped or reduced. The Letter was an invasion of his privacy and an attack on his integrity.
21. He should not have been sent the Letter as he is of State Pension Age and therefore cannot claim ESA.
22. The Letter should have taken into account the fact that the recipients were former police officers who had to leave service because of ill-health or injuries.
23. Some of the Administrator's actions were not legal, because it said it would use section 5 of the Data Protection Act to access a person's data without obtaining their consent.
24. He has not suffered financial loss. However, he has had to undertake a lot of work and has lost a lot of time because of a poor complaints system and a lack of action being taken by the Administrator.

25. The Administrator informed him that it had changed the wording of the Letter. However, he was not sent a version of the Letter with such changes. The Administrator refused to send an edited version of the Letter to the original recipients of the Letter.
26. He would like the following:-
- The complaints systems he used regarding this complaint to be improved.
 - The Letter to be withdrawn from all recipients and their signed Consent Forms to be destroyed.
 - A new letter to be issued in replacement of the Letter, which:
 - is signed and fully dated;
 - specifies that no pensions will be stopped or reduced;
 - does not suggest that recipients may provide false information;
 - is sent only to people it affects; and
 - contains an apology for how the Letter was worded.
 - The authority to access DWP records to be time-limited and restricted to information about welfare benefits that require recovery against an injury pension.
 - A written apology to be sent to recipients of the Letter, explaining how things went wrong and confirming that their previous responses have been destroyed.
 - Those who authorised and sent the Letter to be given advice and for this to be recorded.

Summary of the Administrator's position

27. The 2006 Regulations state that in certain circumstances, relevant benefits from the DWP must be deducted from the injury pension a former police officer receives. Since February 2017, the relevant benefits include ESA. As some pensioners may have been claiming ESA and receiving the wrong amount of injury pension, the Administrator was under an obligation to send the Letter.
28. Mr N was one of the recipients of the Letter because he was under State Pension Age in February 2017.

Summary of the Employer's position

29. The Administrator is required to collect information about what benefits each Scheme member receives, so that it can check whether an injury pension needs to be adjusted. The Employer has a legal duty to subtract relevant benefits from injury

awards. Members of the injury benefits scheme are required to keep the Employer informed about DWP benefits. So, the Letter sent by the Administrator was appropriate and necessary; the Administrator was simply applying injury pension legislation. The Letter was sent to inform pensioners of the change to the 2006 Regulations and obtain relevant benefits information.

30. The Administrator was correct to send the Letter to Mr N, as he had not started receiving his State Pension by 10 February 2017, the date from which ESA became a relevant benefit under the 2006 Regulations.
31. Where the Employer or the Administrator is legally obligated to deduct from a pension a relevant amount under the 2006 Regulations, it is not suitable for it to depend on the pensioner's goodwill to do so. The pensioner may, intentionally or mistakenly, provide incorrect information, which could impede the correct administration of the pension. So, the Employer or the Administrator must verify the pensioner's information with the DWP.
32. There is no requirement for the Employer to apologise to the recipients of the Letter for how the Letter was worded. This is because it did not contain any threats and the Administrator is legally entitled to receive information about benefits.
33. There is no requirement for the Administrator to take action against its employees. The Administrator and the Employer are in fact awaiting the DWP's confirmation as to whether the Administrator can access DWP records without first obtaining consent from the data subject.
34. The Administrator was not phishing. Neither the Administrator nor the Employer tried to obtain information about Mr N for dishonest objectives.
35. The Letter could have been worded more clearly, by not including a request for consent from Scheme members to take actions for which such consent was not required.
36. The Employer sent Mr N an apology on 12 May 2020 for the distress caused to him regarding the Letter. The version of the Letter with the Consent Form signed by Mr N has been destroyed.
37. The format of the Letter was changed specifically to address concerns about the Declaration Form and the Consent Form being combined. Scheme members now only need to confirm that they have provided accurate information.
38. Since 2019, there has been no change in which welfare benefits are to be offset against an injury pension. This is why there has been no re-issuing of the Letter.

Adjudicator's Opinion

39. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Administrator or the Employer. The Adjudicator's findings are summarised below.
40. Upon receiving the Letter, it was Mr N's responsibility to carefully review its contents and those of the documents attached to it, before deciding whether to sign the Consent Form. If Mr N was unsure about the scope of the information sought, or about the consequences of not signing the Consent Form, he should have contacted the Administrator about this before signing anything. He also could have sought legal advice at that point.
41. The Letter did not contain a threat that the recipient's pension may be stopped or withheld. It used neither of these words and in fact stated that an overpayment may be made.
42. The wording of the Letter and the attached Declaration Form was appropriate and reasonable. The Letter specifically requested information about the relevant benefits under the 2006 Regulations. The Declaration Form specifically requested information about awards regarding the injury which gave rise to ill-health retirement.
43. The Administrator took proactive steps to manage the Scheme appropriately and address any concerns that recipients of the Letter may have experienced. It changed the format of the Letter to address concerns about the consent forms being combined. It sought guidance from the DWP about whether it requires consent to access Scheme members' welfare benefits records.
44. In the Adjudicator's opinion, neither the sending of the Letter and its attached forms, nor the conduct of the Administrator, amounted to maladministration.
45. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, which I have considered but they do not change the outcome. Mr N said:-
 - The Police owe a duty of care to ill health pensioners. The Letter was not written in accordance with this.
 - The Letter was misleading because it was sent to people to whom it did not apply. The issuing of the Letter was an unnecessary invasion of privacy. The Letter implied that recipients were required to sign it. The request for access to their welfare benefits information was also not time limited.
 - The Letter would not have been reworded if members of the Scheme had not complained about it.
 - The Administrator said that the Letter was not applicable to Mr N. So, the Administrator conceded that it should not have been sent to him.

- The ICO ordered the Administrator to 'Cease and Desist'. Despite this, the Administrator said it is awaiting confirmation from the DWP as to whether it requires Scheme members' consent to access their welfare benefits records.

Ombudsman's decision

46. Mr N complained that the Administrator used a threat and deceit to obtain permission to access confidential information about Scheme members. He said the Administrator requested access to more information than was necessary for its purposes.
47. I do not find that deceit or threats were used in the Letter. The Letter informed recipients that if they did not provide the Administrator with consent to access their welfare benefits records, overpayments may be made. Scheme members who were receiving the relevant welfare benefits would be paid more than they were entitled to under the regulations that govern the Scheme if they were claiming welfare benefits and the Administrator was not informed of this. So, I find that it was reasonable and necessary for the Administrator to request access to members' welfare benefits records. Further, it was open to recipients of the Letter, if uncomfortable with providing the consent sought, or unclear on the purpose of the Letter, to contact the Administrator, or refuse to sign the Consent Form. Mr N signed the Consent Form and sent it to the Administrator.
48. Mr N contended that the Administrator should have only requested access to information about Scheme members who reported that they were claiming the relevant welfare benefits. It would not be practical or professional for the Administrator to rely solely on the assurances of Scheme members to ensure it was enforcing the 2006 Regulations correctly. The Administrator has a responsibility to administer the Scheme on the basis of verifiable evidence. This is important for maintaining accuracy and ensuring that its actions can be effectively monitored by regulatory bodies.
49. Mr N expressed concern that the requested access to welfare benefits records was not time limited. This is a reasonable concern. However, a pension is typically set up to provide a person with an income for the remainder of their life. So, I find that it was reasonable for the Administrator to request the information without a prescribed time limit.
50. Mr N said the Letter was not written in accordance with the duty of care the police owe to ill health pensioners. My remit is to make a finding on whether there has been maladministration in the context of how a pension scheme has been administered. It does not extend to making findings on employment matters. Notwithstanding this, I find that the wording of the Letter was appropriate in the circumstances.
51. Mr N contended that the issuing of the Letter was an unnecessary invasion of privacy. At the point of issuing the Letter, the information about Scheme members' welfare benefits was not actually taken. Further, it was open to recipients of the Letter to

refuse to sign the Consent Form. So, I do not agree that the issuing of the Letter constituted an invasion of privacy or amounted to a tool for phishing.

52. Mr N said the Letter would not have been reworded if members of the Scheme had not complained about it. The Employer asked the Administrator to change only the format of the Letter. The Letter has not been re-issued. I do not consider that deciding to edit the format of the Letter amounts to agreeing that its contents were inappropriate. The Employer said the Letter could have been worded more clearly but only to ensure that it did not ask for consent from Scheme members where such consent was not required. This does not support Mr N's contention that the Letter was reworded because it sought too much information.
53. Mr N claimed that the Administrator agreed that the Letter was not applicable to him and should not have been sent to him. The Administrator said the 2006 Regulations did not directly affect Mr N as he was not claiming any of the relevant welfare benefits. I do not accept that this amounts to the Administrator conceding that the Letter should not have been sent to him. I note that the Administrator apologised to Mr N on 17 December 2019 for "...stress and frustration...caused...by the letter". It is understandable that Mr N may have taken this to be an expression of regret for sending the Letter. However, the Administrator specifically apologised for stress and frustration caused, and did not make any statements contradicting its repeated assertions that it was under a duty to issue the Letter.
54. While I note Mr N's comment that the ICO ordered the Administrator to 'Cease and Desist' from its attempt to access his welfare benefits records no evidence has been provided to support this assertion.
55. I find that there has been no maladministration on the part of the Administrator or the Employer.
56. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
30 August 2023