

Ombudsman's Determination

Applicant	Mr S
Scheme	The West Midlands Pension Fund (the WMPF)
Respondents	City of Wolverhampton Council as administering authority of the WMPF (the Fund)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Fund beyond that already taken.

Complaint Summary

2. Mr S' complaint against the Fund is that he was informed on 20 September 2021 that his pension would be reduced by £314.43 per annum from 1 March 2022.

Background information, including submissions from the parties

3. Mr S is a pensioner member of the Fund.
4. On 20 September 2021, representatives of the Fund wrote to Mr S to confirm a reduction to his future pension payments.
5. This followed an exercise undertaken, by the Fund, to reconcile data held for members of the Local Government Pension Scheme, which included the WMPF.
6. Specifically, this exercise was undertaken to re-evaluate pensions payable from the Fund in respect of contracting-out of the second state pension against data held by His Majesty's Revenue and Customs (**HMRC**) – known as GMP (Guaranteed Minimum Pension) reconciliation.
7. As a result of the reconciliation of the Fund's data with HMRC records, a difference was identified in the benefit Mr S was receiving and what he should have received. This difference had resulted in an overpayment of Mr S' pension.
8. The Fund did not intend to recover the past overpayment of the pension but as a result of the reconciliation exercise Mr S' ongoing annual pension would reduce from £24,102.80 to £23,788.37, with effect from 1 March 2022.

9. The Fund considered that there was no error or oversight on its part as it complied with statutory requirements when implementing the Guaranteed Minimum Pension (**GMP**) Rectification. In addition, it reiterated that it took the discretionary decision not to recover prior overpayments and provided six months' notice to Mr S of the changes to his future pension.
10. According to the Fund, Mr S benefited – as he received £1,123.35 more than he should have received.
11. On 2 November 2021, the Fund wrote to Mr S in response to his initial concerns clarifying how the change to his pension benefit had occurred, along with a summary of how his pension had been recalculated following the GMP reconciliation exercise.
12. On 10 November 2021, a representative of the Fund and Mr S discussed the GMP reconciliation exercise, and the letters received from Mr S requesting a calculation of how the benefits had been produced.
13. On 15 November 2021, the Fund wrote to Mr S with a detailed breakdown of how his pension had been recalculated, together with an explanation as to why the overpayment appeared lower given the amount of reduction to his pension.
14. On 22 November 2021, Mr S contacted the Fund to raise further questions. The Fund wrote to Mr S on 6 December 2021 enclosing copies of payslips, an updated version of his revised pension calculation and a copy of the Internal Dispute Resolution Procedure (**IDRP**) form as requested.
15. On 13 January 2022, the Fund received Mr S' application under the IDRP.
16. The stage one IDRP decision was issued to Mr S on 22 March 2022 and stage two was completed on 15 August 2022.
17. In the stage one decision the Director of Pensions apologised on behalf of the Fund for the delay in the Fund acting on information received from HMRC.
18. It was confirmed that there was no intention to recover the overpayments but stated that the Fund must take action to pay the correct pension going forward. It was also unable to pay Mr S' pension at the incorrect level pending completion of his appeal.
19. The stage two decision stated that the GMP reconciliation had been completed as efficiently as possible and that the Fund had complied with its legal duties.
20. Mr S was unhappy with the outcome of the IDRP and that his pension was adjusted before the final outcome of the IDRP process. He therefore brought his complaint to the Pensions Ombudsman on 17 October 2022.

Adjudicator's Opinion

21. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was potentially required by the Fund. The Adjudicator's findings are summarised below:-

- The Adjudicator accepted that there would have been no need to reduce Mr S' pension going forward if the error had been identified before Mr S' pension had been put into payment. This was only because his pension would always have been paid at a lower level.
- It was also understood that from 11 April 2022, due to the inflation protections within the WMPF, Mr S' pension rose in line with the cost of living to £24,428.06, higher than his pension of £24,102.80, prior to the adjustment.
- Given that overall Mr S benefited by £1,123.35, it is unlikely that the Pensions Ombudsman would make an award that exceeded this amount.
- However, on further investigation the Fund confirmed to the Adjudicator that the error, identified during the GMP reconciliation exercise, stemmed from not implementing a GMP notification from HMRC in July 2014.
- As a result of this admission and further submissions from the applicant, the Fund agreed to refer the case to its Member's Panel (**the Panel**), as regards to an increased sum in respect of non-financial injustice, with a view to potentially resolving the case.
- The Adjudicator reiterated that it did not mean that the Pensions Ombudsman would necessarily agree with an increased award, and if the case did proceed to a full investigation, it may well be the case that the Ombudsman would not choose to make an award beyond the terms of what has already been offered.
- The Panel did not make an award beyond the waiving of the overpayment, but the Fund agreed to issue Mr S with a letter of apology, again in potential resolution of the case.
- Mr S considered that the apology he received was not sincere. The Adjudicator appreciated that this was a subjective matter, and that they could not compel pension providers to use any particular wording in these circumstances.
- The Adjudicator explained that all companies will have their own criteria for issuing apologies. In the Adjudicator's opinion, it would be reasonable to view the apology received, directly from a senior fund executive, as meeting the requirements that Mr S stipulated. Mr S should therefore have been able to view this as a successful conclusion to his complaint.
- The Fund has confirmed that it will not make any further comment in addition to those it has already made, so it seems to the Adjudicator that the case had been taken as far as possible.

22. Mr S did not accept the Adjudicator's opinion, or the letter of apology from the Fund. The complaint was passed to me to consider.
23. Mr S provided further comments in response to the Opinion. In summary, he said:-
- The Fund, through its inefficiency in not implementing the July 2014 notification from HMRC, have caused this issue. The Fund is reluctant to admit and apologise for an error entirely of its making.
 - The Fund has not followed its own IDRP process by reducing his pension before the outcome of the IDRP was made known to him.
 - The payroll information for March 2022 was available to members well before the issue of the Fund's IDRP letter to him of 22 March 2022. This is another matter the Fund is reluctant to admit and apologise for.
 - In addition, the Fund omitted to inform the Panel of the above matters which were crucial in allowing a balanced and just decision.
 - He is not aware of any correspondence in which the Fund admits and apologises for its errors. This is the recourse he is seeking.
24. I have considered Mr S' further comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. I agree that the current settlement offer, notably including the decision not to recover prior overpayments, the provision of six months' notice of the changes to the level of pension, and the letter of apology from the Fund is sufficient redress.
26. I appreciate that Mr S is still unhappy that his pension was reduced in 2022 because of the GMP Rectification – however, he is only entitled to receive the correct benefits payable from the Fund. I also note that he has benefited by receiving £1,123.35 more than he should have received.
27. It is now apparent that Mr S' benefits were overpaid as a result of the Fund's initial failure to implement a GMP notification from HMRC in July 2014. Had this been implemented at the time, there would have been no need to reduce his pension going forward, but only because his pension would always have been paid at a lower level. To be clear, Mr S was never entitled to the higher rate of pension.
28. Finally, it should provide some reassurance to Mr S that from 11 April 2022 because of the inflation protections within the WMPF his pension rose in line with the cost of living to £24,428.06, higher than his pension of £24,102.80, prior to the adjustment.
29. Therefore, given the above and that Mr S has benefited by £1,123.35 as result of the initial failure of not implementing a GMP notification from HMRC, I do not uphold Mr S' complaint.

CAS-95504-W6C2

Dominic Harris

Pensions Ombudsman

31 May 2025