PO-10777

Ombudsman's Determination

Applicant	Mr O
Scheme	Police Pension Scheme (the **Scheme**)
Respondent	Scottish Public Pensions Agency (the **Agency**)

Outcome

1. I do not uphold Mr O's complaint and no further action is required by the Agency.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr O's complaint against the Agency is in relation to the incorrect information he received in 2006 about his retirement date, which was partly due to an overstated service credit in relation to a benefit transferred in from the Local Government Pension Scheme (**LGPS**). As a result, he will now retire later than he expected and will have to alter his retirement and associated financial planning accordingly.

Background information, including submissions from the parties

4. Mr O was previously employed by Fife Council and had accrued pensionable service of one year 128 days under the LGPS.

5. In 1989, Mr O transferred the benefits he has accrued under the LGPS to the Scheme. He was credited with 337 days pensionable service and at the time this was confirmed to Fife Constabulary. There is no evidence to show that Mr O was informed of this at the time.

6. In 2006, Mr O received a benefit statement which showed the service credit in respect of the benefits transferred in 1989 to be two years 152 days. The statement also showed that he would have completed 30 years by 9 December 2016. He signed a document confirming that the information shown was correct.

7. Under the regulations governing the Scheme, if a member has completed 30 years pensionable service he/she can retire from the Scheme on a full pension.

8. Around early 2015, Mr O contacted the Agency with a general query and it came to light that the credit for the transferred in benefits from the LGPS should have been 337 days and not two years 152 days. Mr O made a complaint which was dealt with under the Scheme's internal dispute resolution procedures, but his complaint was not upheld.

9. Mr O says that if he was not allowed to retire on a full pension in December 2016, he would be penalised and not only because he would have to work longer than expected. His explanation is set out below.

   - He had taken a temporary promotion to the role of an Inspector in 2012, as part of his plan to retire on an Inspector's pension in 2016. He says that he would not have taken the temporary promotion, if he had known that he could not retire on a full pension in December 2016. The reason for this is because the temporary promotion was a residential post away from his family for three years, but he took it in the knowledge that he may retire on a full pension in 2016. This is no longer possible. He and his wife had agreed that he should seek a position with stable, regular and less demanding hours so that he could spend more time at home with his family.

   - While he accepts that the temporary promotion would have brought extra finance in the short term, given the little difference and his financial position at that point, this was not a determining factor.

   - He will now retire as a Sergeant with a loss of £91,146 taking into account commutation and mortgage repayments and other factors. He will also have an additional recurring annual loss of £3,692.

   - He purchased a van for £4,500 for a business when he retired. This will not be of use now due to age/mileage projecting to 2018, and he will not be able to generate the income to replace/repay his outlay.

   - He had planned to purchase a home in Italy and for his wife to retire early, with a view to moving there permanently where they would jointly retire at a suitable time. This is no longer possible.

10. The Agency comments are set out below.

    - The Scheme is a statutory scheme and as such they cannot agree to the early payment of his benefits in December 2016 equal to the benefits he would have received in June 2018.

    - They do not dispute that Mr O was given incorrect information by the previous administrators of the Scheme in 2006 and are willing to offer £500 for the non-financial injustice he has suffered.

- They are not convinced that he has suffered financial injustice as a result of having to retire in June 2018 instead of December 2016. He feels that retiring later than anticipated will leave him financially worse off, but they would argue that he would benefit from receiving a salary up to his retirement in 2018.

- With regard to his claim that he would lose out because he would be retiring on a lower salary, the terms of the Scheme allows the best 365 days in the final three years of service to be used to calculate his pension. This will help to limit any impact.

Adjudicator's Opinion

11. Mr O's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Agency. The Adjudicator's findings are summarised briefly below.

- There is no dispute that the information given to Mr O in 2006 was incorrect. The provision of incorrect information is maladministration. However, the remedy would be to place him back in the position he would have been in had the correct, and not the incorrect information, been provided to him in the first place.

- If Mr O had not taken the temporary promotion, he would still have retired in June 2018 but his pension would be based entirely on his lower Sergeant's salary. The fact that the best 365 days' pensionable salary in the final three years' service can be used to calculate his pension in June 2018, will mean that part of the salary he earned in the role of an Inspector can be included in his final pension. Therefore, he would have benefitted from having taken the temporary promotion.

- Mr O would have received a pension for approximately 19 months longer had he been able to retire in December 2016, but by carrying on working he is receiving a salary which is higher than his pension.

- Mr O values his loss as £91,146 plus an on-going annual loss of £3,692 which he says includes commutation, mortgage repayments and other factors. However, he has not provided a breakdown of how he arrived at the figures of £91,146 and £3,692, or any evidence to substantiate the loss or an explanation of what 'other factors' maybe. Factors such as commutation and mortgage payments would still apply irrespective of whether he retired in 2016 or 2018. As explained above, part of the Inspector's salary will be included in his final pension. Therefore it is unclear what financial loss he has suffered.

- With regard to the van he had purchased for a business, there is no evidence to show that he was intending on setting up a business when he retired or that he had purchased a van for this. Even if there was evidence of the purchase of a van, he has not mitigated his loss by selling the van. Any loss would be the difference between the cost of purchasing the van and price at which he sold it, and not the price at which he initially bought it.

- Turning to the purchase of a home in Italy, while it is not disputed that both Mr O and wife would move permanently there and retire, he could still proceed with this plan even though he may be retiring 19 month later than expected. Once again, this is a loss of expectation rather than an actual financial loss.

- It is recognised that Mr O has suffered non-financial loss and the Agency have offered to pay him £500 compensation for this, which is considered to be adequate.

12. Mr O did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr O provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr O for completeness.

Ombudsman's decision

13. Mr O's comments to the Adjudicator's Opinion are set out below.

- In 2010, he contacted the Agency and highlighted a mistake on an annual pension statement with regard to his rank. The Agency responded in writing that all was in order with his pension. The Agency had a chance to identify the error at that time and, if they had, he would not be in the position he is in now. He would have made different career/life decisions. Due to the lack of time he cannot now rectify matters which have left him disadvantaged in terms of time with his family and financial position.

- Based on the incorrect information given to him, he believed that he had only three years to work before he retired and, at the time, took the temporary post of an Inspector. He relied upon the incorrect information in making his future financial plans which included retiring on a full Inspector's pension.

- He cannot now be put back in the position he would have been in if the information had been correct. He has made decisions based on the incorrect information which will affect him financially until he dies. The only way the Agency can rectify their mistake is to allow him to retire in December 2016 on a full pension, as informed in 2006.

- According to the Agency's calculations, his pension in 2018 will only take into account approximately three months, out of 12 months, of his Inspector's salary. On the basis that he could have retired on an Inspector's pension in December 2016, the Agency have calculated the pension to be £25,094.48 per annum plus a lump sum of £185,178.18 (after paying an unauthorised payment charge of £8,049.34). This compares with a pension of £23,400 payable from June 2018, plus a lump sum of £170,974 (after paying an unauthorised payment charge of £6,710). Therefore, he would be losing a lump sum of £14,204 and a pension of £1,694 per annum.

- He had intended on paying off his interest only mortgage with a portion of the lump sum he was expecting to receive in 2016. His current monthly mortgage payment is £679.51, which means that as a result of having to continue to pay his mortgage he has lost £12,910.69 (i.e. £679.51 x 19).

- He will have to continue paying pension contributions of £475.62 a month, which means that he has lost £9,036.78.

- He would have to pay more tax and carry on paying National Insurance (**NI**) contributions if he carried on working instead of retiring. In this respect he is claiming a loss of £7,349.65 over a 19 month period.

- Based on an annual pension of £25,094, his monthly income, after deducting tax and NI contributions, would be £1,686. His current monthly income, after deducting tax and NI contributions, is £1,817. As he would not have to pay his mortgage (because it would have been paid off) or any pension contributions, and would be paying lower tax and NI contributions, he would be significantly better off.

- He is a qualified Landscaper and Arboriculturalist. He is unsure how he would provide evidence of an intention to set up a business, other than the skills he possesses.

- He has a bill of sale for the van he bought for the business he was intending on setting up. While he could sell the van, decent vehicles are hard to find and having bought the van for £4,500, by 2018 it will no longer be fit for purpose due to the mileage.

14. I have carefully considered the points made by Mr O. There is no dispute that he was provided with incorrect information in 2006, and this is maladministration. What I need to consider is whether he has suffered an injustice as a consequence of that maladministration.

15. The basic principle is that an incorrect statement about an entitlement to a benefit does not automatically entitle a member to the level of the incorrect benefit quoted. A member is only entitled to receive the benefits provided for under the scheme rules/regulations, i.e. those based on correct information accurately reflecting the scheme rules/regulations.

16. I can provide redress for negligent misstatement if the member can prove that they relied reasonably on a clear and unequivocal statement, which was false, and doing so caused them financial loss. 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.

17. Mr O says that he took a temporary promotion to the post of an Inspector in 2012 based on the incorrect information he was given in 2006. He says that even though the temporary promotion meant a pay increase in the short term, this was not the main reason for taking the promotion; his main reason for taking the temporary promotion was because he thought he could retire on an Inspector's pension in December 2016. He says that he would not have taken the promotion had he known that he could not retire on a full pension in December 2016.

18. I do not dispute that Mr O's plan was to retire on an Inspector's pension in December 2016, and that he might have made a different decision had he known he would have to work through until June 2018. However, the decision to take temporary promotion has not in my view caused financial loss. If he had not taken the temporary promotion in 2012, he would still have had to retire in June 2018, instead of December 2016, and then on a lower pension because it would be based wholly on a Sergeant's salary.

19. With regards to the tax, NI contributions, mortgage payments and pension contributions which Mr O says he will have to pay between December 2016 and June 2018, these are payments that he would have had to make had the correct information been given to him in 2006.

20. For the reasons given above, I consider that Mr O has suffered a loss of expectation and not an actual financial loss.

21. I accept that Mr O has suffered a degree of non-financial loss, in the form of distress and inconvenience. However, the Agency made what I consider to be a reasonable offer of compensation , prior to the complaint being brought to the Ombudsman.

22. Therefore, I do not uphold Mr O's complaint.

Karen Johnston

Deputy Pensions Ombudsman
21 February 2017