

## Ombudsman's Determination

Applicant	Mr S
Scheme	Police Pension Scheme ( <b>the Scheme</b> )
Respondents	Carmarthenshire County Council ( <b>the Council</b> ) Dyfed Powys Police ( <b>DPP</b> )

## Outcome

1. Mr S's complaint against the Council and DPP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, the Council shall pay Mr S £500 for the significant distress and inconvenience caused to him in failing to correct its pension records.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr S has complained that his pension benefits have been wrongly calculated as they factor in a refund of contributions, which he says did not happen.

## Background information, including submissions from the parties

4. On 9 August 1974, Mr S became a member of the Scheme.
5. On 31 March 1982, Mr S's employment with DPP was terminated. Due to the circumstances in which Mr S's employment ended, he was eligible for a refund of his pre-April 1975 service benefits.
6. The pension options available to Mr S were to either: defer all of his benefits in the Scheme, or, elect to have a partial refund and defer the remainder of his benefits. These were set out on a DPP termination form sent to an address in Ty Wynne, Cardigan.
7. On 10 February 1983, the Council says it received a completed termination form from Mr S dated 4 May 1982 citing the above address, with an election for a partial refund.

8. On 17 February 1983, a cheque payment was issued to Mr S at the above address. The Council contends that this cheque was cashed.
9. On 21 July 2015, forms were issued to Mr S about the payment of his deferred benefits. Mr S confirmed that he wished to maximise the lump sum payable to him, and selected the option to receive a cash lump sum of £19,208.34 and an annual pension of £3,098.18.
10. When Mr S's benefits were due to receive final authorisation, it was realised that his service had not been reduced to reflect the partial refund of contributions which had been paid to him.
11. On 14 August 2015, the Council sent Mr S a letter saying that as he had received a refund of his pension contributions in February 1982 for the sum of £79.21, there would be a readjustment to his benefit entitlement. A revised application form was issued, citing the amounts of £17,555.97 and £2,831.71 for his respective cash lump sum and annual pension.
12. On 15 August 2015, Mr S sent the Council a reply saying:

"I refute the fact that I received a refund of £79.21 gross in February 1982 and I suggest that your records are incorrect.

I look forward to receiving full payment for the sum promised within the course of the next seven days or otherwise I will instruct my solicitor to sue you for the full amount and for the stress caused regarding this matter."
13. On 25 August 2015, the Council sent Mr S a copy of the form concerning his request for a partial refund.
14. On 27 August 2015, Mr S sent the Council a letter saying that the form supplied appeared to have been completed by his father, who had the same name as him. He also mentioned that he had an outstanding balance on his Visa card and a Barclays loan which he was paying interest on. A statement from Mr S's father was provided with this letter, stating:

"Having spoken to my son [Mr S]...I can confirm that the handwriting on the Notice of Termination was completed by myself.

At the time I was a serving Inspector in the Dyfed Powys Police and had represented my son when he appeared in front of...the then Chief Constable. It was an extremely stressful time. I have no recollection of filling or signing this form.

I also add that I used my home address because my son lived in Llandrindod Wells at the time."

15. On 15 September 2015, the Council, in response to a query by Mr S, sent him a letter saying that having checked his pension file, it could confirm that a refund cheque was issued on 17 February 1983 in Mr S's name, and cashed. It provided a copy of a line from its refund book, which contained details of the cheque.
16. Further exchanges took place about this matter between Mr S, the Council and DPP. On 23 October 2015, Mr S's legal representative (**the representative**) submitted a complaint to DPP under stage one of its Internal Dispute Resolution Procedure (**IDRP**), saying: -
  - At the time of the leaving the police, Mr S had lived at an address in Llandrindod Wells. The termination form he was believed to have completed cited an address which Mr S had never resided at.
  - Since leaving his employment with DPP, Mr S had received annual benefit statements. On 14 August 2015, Mr S received a letter where, for the first time in 25 years, he was told that it had come to DPP's attention that a pension refund had been made to him in 1983. This demonstrated gross incompetence and maladministration.
  - Mr S could not check whether he received this payment as his bank did not hold records dating that far back.
  - The outdated ledger provided by the Council did not prove that the cheque was cashed.
17. On the same date, a complaint letter was also sent by the Representative to the Council.
18. On 28 October 2015, the Council responded to the complaint. It said: -
  - At the time when Mr S had his employment terminated, a computerised system for membership records did not exist. Upon final payment, benefits were cross referenced to ensure that that the original benefits calculated matched the computerised records.
  - The Refund Book was used to record requests and payments to members who received either full or partial refunds of contributions.
  - A partial refund was requested and accordingly, paid. The appeal was not successful as Mr S's case had been processed in line with the regulations.
19. On 15 December 2015, Mr S's completed option forms were received by DPP. His benefits were calculated on the basis that he had received a partial refund.
20. The representative referred Mr S's complaint to this Office for an independent review. On 9 February 2016, the Council provided its formal response, saying it could only pay benefits in accordance with the regulations.
21. On 17 February, the representative provided its comments on the Council's formal response. It highlighted that the form in question referred to Mr S's station being in Llandrindod Wells, which was where Mr S resided, as opposed to the Cardigan

address stated. It also said that Mr S had intended to make full payment of the debt, incurred through his bank card and a Barclays loan, shortly after 9 August 2015 when he expected to receive his pension benefit. The escalating situation regarding these debts was contributing to the stress caused to Mr S by this situation.

22. On 19 February 2016, DPP sent this Office its formal response, saying it was satisfied that the process was conducted correctly.

### **Adjudicator's Opinion**

23. Mr S's complaint was considered by one of our Adjudicators who concluded that the Council should pay Mr S £500 for the significant distress and inconvenience caused to him by its error. The Adjudicator's findings are summarised briefly below: -
- Mr S disputes the suggestion that he opted to receive a partial refund of contributions.
  - A written statement was provided by Mr S's father who believes the form was completed and signed by him; he also notes that the address on this form was his own. It is highly probable that Mr S's father completed and returned this form.
  - Mr S has suggested that the incorrect address on the form should have called its validity into question. However, aside from the address, the details on the form corresponded to Mr S's circumstances, such as his dismissal from the police service. Therefore, it could not be said that DPP were negligent in processing the form.
  - With regard to whether the cheque was cashed, the entry on the refund book did not definitively prove this, however it was sufficient evidence. Initially, the Council mistakenly said that the refund was made in February 1982, rather than 1983, but this appeared to be a small oversight rather than a general reason to doubt the records which DPP and the Council had presented.
  - Mr S experienced a delay in receiving his benefits because of the Council's failure to notice the partial refund, which only came to light after it realised a discrepancy between its computerised and paper records. This should have been corrected earlier; the delay in doing so led to Mr S believing that his entitlement would be higher. The Council should make an award to Mr S for the significant distress and inconvenience it caused by raising his expectations.
24. The Council and DPP accepted the Adjudicator's Opinion. The representative, on behalf of Mr S, did not accept the Adjudicator's Opinion; it said: -
- Mr S was unaware of the partial refund until the Council's letter of August 2015. Therefore, the expectation which Mr S had in relation to his benefit entitlement existed since 1982; an award of £500 was not sufficient. Further, this amount barely contributed to Mr S's legal costs.

- The Adjudicator appeared to accept that Mr S's father signed the form and possibly cashed the cheque but Mr S should not suffer because of this.
- The issue of incorrect dates and administrative errors had not been addressed in the Adjudicator's Opinion.
- The award payable to Mr S for his non-financial injustice should be a "halfway compromise", which takes into account his legal costs and the substantial delay in addressing this issue.

25. The complaint was passed to me to consider. Mr S's further comments 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 the representative for completeness.

### **Ombudsman's decision**

26. I am satisfied that Mr S's father completed and returned the form in question, from 1983, and that the cheque was cashed.
27. Although Mr S says that he had no involvement in either of these actions, the key point is that Mr S's entitlement changed once the partial refund was processed. The personal circumstances behind the partial refund have no bearing on this matter.
28. The Council did not act incorrectly in administering the partial refund which had been requested. Accordingly, it is appropriate that it was taken into account when calculating Mr S's benefit entitlement.
29. The representative has argued that an award of £500 is insufficient when considering the prolonged loss of expectation Mr S has suffered. I have considered the revised amounts of Mr S's pension and lump sum, and compared this with what was offered originally. Whilst the difference in these amounts is not insubstantial, they are not significant enough to warrant a higher loss of expectation award. Furthermore, the pension and lump sum were revised before benefits coming into payment, limiting the impact of such an adjustment.
30. Lastly, the representative has highlighted the legal costs which Mr S has incurred in disputing this matter. However, it was Mr S's decision to obtain legal assistance; such representation is not a requirement in bringing complaints to this Office. It would not be appropriate to increase Mr S's award on this basis.
31. Therefore, Mr S's complaint is partly upheld in respect of the significant distress and inconvenience suffered by him, as identified by the Adjudicator.

**PO-11461**

**Directions**

32. Within 14 days of the date of this determination, the Council shall pay Mr S £500 for the significant distress and inconvenience caused to him by its failure to correct its pension records at an earlier date.

**Karen Johnston**

Deputy Pensions Ombudsman  
29 June 2017