

Ombudsman's Determination

Applicant	Mr E
Scheme	Police Pension Scheme (PPS)
Respondents	Greater Manchester Police (GMP)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Greater Manchester Police.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E says there was undue delay in processing his ill health retirement such that he suffered financial loss. He says his complaint relates to the period from 14 February 2013 to 31 January 2014.

Background information, including submissions from the parties

Background

4. Mr E was employed by GMP, as a constable, from 31 January 2000 to 8 February 2006, on a full-time basis. In July 2006, Mr E suffered severe injuries in a road traffic accident. On 16 June 2008, Mr E returned to work on a part-time basis.
5. The relevant regulations are the Police Pensions Regulations 1987 (SI1987/257) (as amended). References to regulations in this Determination are to regulations contained in the above statutory instrument.
6. In October 2011, Mr E's employment was reviewed as part of a wider review of officers on restricted duties. GMP's occupational health physician, Dr Boag, expressed the view that Mr E would "probably" be considered "permanently disabled from performing one or more of the ordinary duties of a police officer". Mr E was informed that Dr Boag was submitting a report and that his case would be considered by a panel on one of five dates between November 2011 and March 2012. He was also told that the outcome could include retirement.

7. Mr E's case was then reviewed by a panel. In November 2011, Mr E was informed that the panel had not made any formal decision and had requested further action. On 26 January 2012, Mr E was informed that his case was to be referred to a Selected Medical Practitioner (**SMP**) to assess his long-term prognosis. Referral to an SMP is required by the Police Pension Regulations 1987, before a decision can be made as to entitlement to ill health retirement benefits.
8. In April 2012, Mr E was diagnosed with stomach cancer and required surgery. He says he spoke to GMP's occupational health unit and was advised to put his early retirement on hold until he had recovered from the surgery.
9. A report was provided by an SMP, Dr Deighton, on 6 December 2012. He found Mr E to be permanently disabled under regulation H1.

Timeline

The following timeline has been compiled from exchanges of emails and other correspondence between GMP's solicitors, Mr E's solicitors and other parties.

22 January 2013	GMP's Deputy Chief Constable agreed to Mr E's retirement in principle.
24 January	GMP's solicitor contacted a Police Federation representative with a view to entering into a compromise agreement in respect of Mr E's retirement. She asked for confirmation of the solicitor who would be instructed in connection with the matter.
14 February	Mr E was informed, by a Police Federation representative, that GMP was considering medical retirement but would require him to sign a compromise agreement.
25 February	Mr E referred the matter to his solicitor.
6 March	GMP's solicitor provided a draft compromise agreement for Mr E's solicitor. She proposed a termination date of 28 March 2013.
2 April	Mr E enquired about progress. His solicitor said he was waiting to hear from GMP but he thought Mr E wished to work to a retirement date at the end of April 2013.
4 April	GMP's solicitor sent a revised draft agreement to Mr E's solicitor, together with updated pensions information and a copy of the PPS members' guide.
7 April	Mr E's solicitor queried why the pension figures had reduced. He said he had assumed the figures would increase because Mr E's service had increased.
19 April	Telephone conversation between the solicitors.

22 April GMP's solicitor confirmed that the 4 April figures were correct.

25 April Further discussion between the solicitors.

26 April Mr E's solicitor requested further details about the calculation of his pension.

8 May GMP's solicitor requested a response to the draft agreement.

6 June GMP's Pension Team wrote to Mr E's solicitor confirming that his pension would be based on 20 years' whole-time equivalent service.

26 June GMP's Pension Team Leader wrote to Mr E's solicitor in response to a request for further information about his pension. He said that, as of 26 June 2013, Mr E would receive an annual pension of £7,316.11 or a maximum lump sum of around £42,900 and an annual pension of around £5,487.

He went on to explain that the calculation for a part time member was:-

Whole Time Equivalent Service x $\frac{\text{Actual Part Time Service}}{\text{Actual Calendar Length Service}}$
(including ill health enhancement)

Divided by 60ths and multiplied by the Whole Time Equivalent salary.

For Mr E, this meant:-

11 years 20 days + 8 years 345 days x $\frac{6 \text{ years } 284 \text{ days}}{11 \text{ years } 20 \text{ days}}$

Divided by 60ths and multiplied by a salary of £35,796.

GMP's Pension Team Leader said he understood the pension figure was lower than previous estimates. He said this was because the ill health enhancement was a static amount (20 years) but, as time went on, the actual service and calendar service increased and reduced the enhancement. Statements of projected ill health retirement benefits had been provided to Mr E's solicitors for retirement on: 31 January, 28 February and 30 April 2013. Further statements were provided for retirement on: 30 September and 31 December 2013, and 31 January 2014.

29 August Mr E's solicitor informed him that GMP would provide an updated statement of benefits for retirement on 30 September 2013. He said it appeared to agree in principle to amending the compromise agreement to allow for Mr E to apply to the Pensions Ombudsman. He said GMP had suggested he draft the amendments and send them to GMP for approval.

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29 August	GMP's solicitor provided another draft agreement.
30 August	Mr E's solicitor submitted a revised compromise agreement with suggested amendments.
2 September	GMP's solicitor provided further pensions information.
13 September	GMP's solicitor responded to the suggested amendments to the agreement. He asked Mr E's solicitor to specify the nature of the claims he thought GMP might be excluding. He said the agreement in its original form allowed Mr E to pursue a claim in respect of accrued pension entitlement. He said it would be helpful to understand what Mr E sought to be able to do or achieve over and above pursuing a claim in relation to such rights. GMP's solicitor also said he had not taken instruction on the amendments because he would not advise GMP to agree to them. He said they were very wide and created uncertainty.
17 October	Mr E's solicitor informed Mr E he was waiting to hear whether GMP was prepared to agree the amendments he had suggested. He said he had spoken to GMP's solicitor that day to emphasise his concerns about the delay and the effect this was having on his pension. He said GMP's solicitor had told him he was waiting to hear from the Chief Constable.
25 October	In an email to Mr E's solicitor, GMP's solicitor said he had been contacted by Mr E to ask if he had been in dialogue with his solicitor. He said Mr E wished to expedite the matter to retire at the end of September in an effort to prevent his pension being further reduced. GMP's solicitor said Mr E had asked why agreement could not have been reached in September. He said he had explained that the original agreement had allowed Mr E to bring a claim in respect of his accrued pension rights but his solicitor was of the opinion it required alteration. He said Mr E had suggested he would have been willing to enter the agreement in its original format. GMP's solicitor asked for clarification as to whether Mr E was willing to enter into the agreement in its original format to allow him to retire at the earliest opportunity.
26 November	Mr E asked his solicitor if there had been any progress. He was told there had not been any progress but that GMP's solicitor had telephoned the previous Friday when his solicitor was on leave.
12 December	GMP's solicitor provided a tracked version of a revised draft agreement. He asked for a response as soon as possible because GMP wished to proceed Mr E's retirement on 31 December. He said this could be achieved if it received a signed electronic copy of the agreement by 19 December.

- 17 December Mr E's solicitor said the tracked version did not reveal all the amendments. He said he was attaching a "true" tracked version. He said they were unhappy in relation to the way in which GMP had attempted to restrict the basis upon which Mr E could pursue future complaints about his pension. He said Mr E's complaints were not limited to maladministration but included delay and a failure to inform or advise him that the value of his pension was decreasing on a month by month basis. He said there may also be a claim for breach of an implied term of Mr E's contract of employment in respect of these matters. He said Mr E did not wish to limit the way in which his claim or complaints could be pursued.
- 8 January 2014 GMP's solicitor responded. He expressed the view that the recent amendments largely reverted back to the agreement sent to him on 2 September 2013. He acknowledged there had been clarification of the nature of the claim or complaint Mr E wished to pursue. He said it was their view that a claim for breach of contract with regard to his pension was not likely to be included in the usual exclusion of claims for accrued pension rights. He also said GMP did not seek to restrict Mr E's ability to pursue a claim in respect of accrued pension rights. He went on to say Mr E was a police officer and, as such, was not employed and did not have a contract of employment. He asked Mr E's solicitor to reconsider the amendment relating to breach of contract and remove it.
- 22 January GMP's solicitor chased for a response.
- 23 January GMP's solicitor provided the 7th version of the settlement agreement.
- 27 January Mr E's solicitor provided the signed agreement.

Mr E retired with effect from 31 January 2014.

Mr E's position

10. Mr E says he was informed, on 14 February 2013, that he was to be medically retired subject to him signing a compromise agreement. He says he became aware that each month his benefits were decreasing because the ill health retirement factor was reducing. This was because he was receiving a part-time salary.
11. Mr E has said he was not informed by GMP, or the Scheme administrator, of the implications of the delay in taking his benefits.
12. Mr E is seeking an adjustment to his pension benefits or a capital sum to put him in the position he would have been in had his retirement been completed at an earlier date. He is also seeking reimbursement of legal fees which he says were incurred in trying to resolve the wording of the compromise agreement.

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13. Mr E says that, after all the back and forth between his solicitor and its solicitor, GMP informed him his right to make a claim about his pension had always been protected. He says GMP quoted a regulation relating to this. He says, if GMP had done this at the outset, he would have signed the settlement agreement immediately.
14. Mr E has also referred to being told by the occupational health unit to put off his retirement. He says, if he had gone ahead in April 2012, he would have been able to retire earlier.

Financial loss

15. Benefit statement provided on 1 October 2012, for retirement on 31 January 2013:-

Annual pension	£5,862.27
Lump sum	£39,081.82

16. Actual benefits:-

Annual pension	£5,500.64
Lump sum	£36,670.91

17. Mr E has calculated his financial loss as follows:-

Loss of annual pension	£362.13
Loss of lump sum	£2,410.91

18. In a letter to GMP, Mr E said he had taken professional advice and, on the basis of a life expectancy of 78, the net present value of his loss was £21,934.92 (8 August 2014). He also wished to claim £4,000 in legal fees.

GMP's position

19. GMP's submission is summarised below:-
 - By reason of the Police Pensions Regulations 1987 and Home Office Circular 31/2005, additional part time service means a decreasing pension because there is deemed to be a fixed 20 years' service period.
 - In 2011, a force-wide review of officers on restricted duties was commissioned. Mr E was considered under this review.
 - Under the Police Pensions Regulations 1987, ill health retirement is not mandatory simply because an individual has been found to be permanently disabled. In Mr E's case, the Deputy Chief Constable agreed to Mr E's retirement on 22 January 2013. This approval was on the understanding that he entered into a compromise agreement.
 - Mr E's solicitor had received a draft compromise agreement on 6 March 2013.

- During the course of the negotiations between GMP's Legal Services and Mr E's solicitor, Mr E received a number of provisional pension calculations showing the potential decrease. In addition, a detailed letter was sent to Mr E's solicitor, on 26 June 2013, explaining that the reducing pension was known.
 - Mr E has acknowledged that he was aware of the potential decrease in the fourth quarter of 2012. He was, therefore, aware before GMP's Legal Services were instructed and before negotiations began.
 - The delays in signing the compromise agreement arose because of Mr E's solicitors seeking to clarify matters surrounding his accrued pension and the need to be able to raise a complaint.
 - GMP has already contributed to the legal expenses relating to the compromise agreement.
 - Any costs incurred over and above its contribution are a matter between Mr E and his solicitor. The legal position was clear. A compromise agreement cannot interfere with accrued pension rights; whatever is said in the agreement itself.
20. In response to a query concerning the calculation of Mr E's pension, GMP said no underpin had applied in his case because he became part-time after 22 June 2005. It referred to guidance issued by the Home Office in Circular 31/2005 (see appendix). Having seen an opinion by the Adjudicator, GMP has agreed to review the calculation of Mr E's pension in the light of paragraph 6 of Part III, Schedule B (see appendix).

Adjudicator's Opinion

21. Mr E's complaint was considered by one of our Adjudicators who concluded that there had been no unreasonable delay by GMP. The Adjudicator's findings are summarised briefly below:-
- Mr E's complaint related to the period from 14 February 2013 to 31 January 2014. This was the period from the date on which he was informed that GMP had agreed to his retirement, but would require him to sign a compromise agreement, to his actual date of retirement. This period amounted to just short of one year. During this time, because of the way in which ill health retirement pensions for part-time officers are calculated, Mr E's prospective benefits were reducing.
 - Mr E believed that GMP unduly delayed drafting and agreeing the terms of the compromise agreement (now known as a settlement agreement). A draft agreement was sent to Mr E's solicitor on 6 March 2013. There was extensive correspondence between both sets of solicitors over the following months. Having reviewed the timeline (see above), the Adjudicator could not identify any undue or unreasonable delay on the part of GMP or its solicitors.

- Mr E's solicitor appeared to have been very concerned that Mr E's ability to pursue any claim relating to his pension should not be restricted. This had resulted in several drafts of the settlement agreement being exchanged between the respective solicitors. GMP was entitled to consider the amendments proposed by Mr E's solicitor and to take legal advice in order to do so. Neither it nor its solicitors appeared to have taken an unreasonable amount of time to respond to the amendments.
- Mr E and his solicitor also required time to consider the various drafts of the agreement. This too was adding to the time taken to reach agreement. Mr E had said that he was aware from the fourth quarter of 2012 that his pension was decreasing every month. It appeared, from the correspondence, that Mr E's solicitor was also aware of this; at least from April 2013 onwards.
- The Adjudicator sympathised with Mr E in seeing his pension reducing as time went on, but said she had not identified any maladministration on the part of GMP in this respect. In her view, Mr E's complaint about delay could not be upheld.
- The Adjudicator noted that Mr E had asked that his legal fees be reimbursed. She said the Ombudsman might consider directing reimbursement of fees incurred as a direct result of maladministration. However, in Mr E's case, she had not identified any maladministration on GMP's part which caused Mr E to incur legal fees he would not otherwise have done. In her view, it was not appropriate, therefore, to ask GMP to reimburse Mr E's legal fees; beyond the contribution it had already made.
- However, the Adjudicator was of the view that GMP should review the calculation of Mr E's pension in the light of paragraph 6 of Part III, Schedule B (see appendix). She agreed that paragraph 7 would only apply if Mr E had part-time service before 22 June 2005 (the date on which the Police Pensions (Part-time Service) Regulations 2005 come into force). Paragraph 6 does not contain the same restriction. The guidance issued by the Home Office indicated that Mr E's previous full-time service should be treated separately if that would be more favourable for him.

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

Ombudsman's decision

23. Mr E has referred to advice he says he received from GMP's occupational health unit, in April 2012, to put his retirement "on hold". He suggests that, if he had pursued ill health retirement at this time, he would have retired at an earlier date and reduced his

loss. This particular aspect of Mr E's case was not considered by the Adjudicator because Mr E had said his complaint concerned the period from 14 February 2013.

24. The review of Mr E's employment arose not because of a decline in his health or an application on his part but as a result of a wider review of officers on restricted duties. One of the possible outcomes of the review was that Mr E would be offered ill health retirement but it was not the only outcome. Mr E had not been contemplating retirement prior to the wider review and he remained in employment during the review. That review came to a conclusion when GMP's Deputy Chief Constable agreed to Mr E's retirement in January 2013, following receipt of Dr Deighton's report.
25. It would not, therefore, be wholly accurate to describe Mr E as pursuing ill health retirement or to say that his retirement had been put on hold in April 2012. His case was one of a number being reviewed by GMP in 2011/12 and it took the decision to refer him to an SMP. This decision was taken prior to April 2012. Nor does it seem likely that Mr E would have actively pursued ill health retirement whilst remaining in employment was still a possibility. It would have meant giving up a salary of around £21,900 (based on the whole-time equivalent quoted in June 2013) for a pension of around £6,000.
26. Mr E argues that GMP should have made it clear earlier in the negotiations that his right to pursue a pension claim was protected. However, throughout the negotiations, Mr E was legally represented. Information about Mr E's right to pursue a pension claim was equally available to his solicitor. I do not find that GMP withheld information from Mr E or his solicitor.
27. Therefore, I do not uphold Mr E's complaint.
28. In the course of investigating Mr E's complaint, my Adjudicator identified a possible oversight in the calculation of his benefits. She suggested that GMP review the calculation and it has agreed to do so. This did not form part of Mr E's original complaint and, in light of GMP's agreement to review, I do not consider it appropriate to make any further comment at this point.

Anthony Arter

Pensions Ombudsman
18 April 2018

Appendix

The Police Pensions Regulations 1987 (SI1987/257) (as amended)

29. The calculation methodology for an ill health pension is contained in Part III, Schedule B:

“Policeman's Ill-health Pension

- 1 ... the amount of the pension shall be determined -
- (a) ...
 - (b) in the case of a policeman some or all of whose service by virtue of which his pensionable service is reckonable was part-time -
 - (i) in a case where, if the part-time service had been full-time service, his pensionable service would not exceed 30 years, in accordance with the formula given in paragraph 4A, and
 - (ii) ...
- but in either case subject to paragraphs 6 and 7.

2 ...

3 Where the policeman has 5 or more years', but not more than 10 years' pensionable service, subject to paragraph 5, the pension shall be of an amount equal to 2 sixtieths of his average pensionable pay multiplied by the period in years of his pensionable service.

4 Where the policeman has more than 10 years' pensionable service, the pension shall be not less than 20 sixtieths, nor more than 40 sixtieths, of his average pensionable pay and, subject as aforesaid and to paragraph 5, shall be equal to 7 sixtieths of that pay with the addition -

- (a) of an amount equal to a sixtieth of that pay multiplied by the period in years of his pensionable service up to 20 years, and
- (b) of an amount equal to 2 sixtieths of that pay multiplied by the period in years by which his pensionable service exceeds 20 years.

4A The formula referred to in paragraph 1(b)(i) is –

$N \times R$

Q

Where -

N is the amount that the annual pension would be in accordance with this Part of this Schedule if all the policeman's service by virtue of which his pensionable service is reckonable were full-time service,

R is the period in years of his pensionable service, and

Q is the period that would be the period in years of his pensionable service if periods of part-time service were reckonable as if they were periods of full-time service.

...

5

- (1) In the case of a policeman who, had he continued to serve until he attained his relevant voluntary retirement age or, where he would not have a relevant voluntary retirement age, until the age of 65, would have become entitled to an ordinary or short service pension, a pension calculated in accordance with paragraph 3 or 4 or the formula in paragraph 4A or 4B shall not exceed the pension to which he would so have become entitled calculated, however, by reference to the average pensionable pay by reference to which the ill-health pension is calculated.
- (2) For the purposes of sub-paragraph (1) the amount of the pension to which the policeman would have become entitled is given by the formula –

$RP \times R$

Q

where

RP is the amount of the pension to which the policeman would have become entitled if he had continued to serve until he attained his relevant voluntary retirement age or, where he would not have a relevant voluntary retirement age, until the age of 65 and all his service were full-time service, and R and Q are the same as in paragraph 4A.

- 6 If in a case where any of the policeman's service by virtue of which his pensionable service is reckonable was part-time service, the amount of the pension calculated in accordance with paragraphs 1 to 5 of this Part would be less than it would have been if the person had become entitled to receive the pension at an earlier date, then, ... the pension shall be of that amount instead.

- 7 In a case where -

- (a) any of a policeman or former policeman's service by virtue of which his pensionable service is reckonable was part-time service before the date on which the Police Pensions (Part-time Service) Regulations 2005 come into force, and
- (b) the amount of his pension calculated in accordance with this Part would be less than it would have been if those Regulations had not been made,

then the pension shall be of that amount instead.”

Home Office Circular 31/2005

30. Guidance issued by the Home Office in June 2005 explained:

“Underpin for officers who reduce their hours

25. In new paragraph 6 of Part III of Schedule B we have also included an underpin so that an officer will not be disadvantaged from switching to working for shorter hours. This cannot happen under the previous system based on reckonable service only, but it can happen under the new pro-rating system. For example, an officer who worked full-time for 26½ years and then 1 year half-time afterwards would receive less than a full pension, since it would be subject to pro-rating. The underpin means that such an officer must be awarded the 26½-year ill-health pension based on the final salary at the 26½-year point (uprated in line with pensions increase) instead of the pro-rated proportion of the notional full-time ill-health pension payable after 27½ years, if the former is more advantageous.

Safeguards for officers with retained rights to the previous calculation method

26. Unlike ordinary, short service and deferred pensions an ill-health pension may not always be larger under the new system than when calculated under the old. New paragraph 7 provides for serving or former officers with part-time pensionable service pre-dating 22 June to preserve their entitlement to an ill-health pension calculated under the previous system where the result would be more favourable. See paragraphs 62 to 71 for a résumé of safeguards.”