

Ombudsman's Determination

Applicant	Mr G
Scheme	Cumbria Local Government Pension Scheme (CLGPS)
Respondents	Cumbria County Council (CCC) Your Pension Service (YPS)

Outcome

1. I do not uphold Mr G's complaint and no further action is required by CCC or YPS.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr G is unhappy because he has been asked by YPS and CCC to repay pension income which he has already paid to his ex-wife. He therefore states he has effectively had to pay this money twice. YPS and CCC have said there was an overpayment, and that this is the amount that has been recovered from Mr G.
4. Mr G is also unhappy with a number of other issues that have arisen in relation to how the payment has been chased, and these are summarised further below.
5. CCC is the administering authority for CLGPS, which the alleged overpayment has been made from. YPS administers membership records on behalf of CCC, and is the party who initially informed Mr G of the overpayment. As a result, the complaint is against both parties.

Background information, including submissions from the parties

6. In 2004, Mr G separated from his now ex-wife. Between 2004 and the implementation of their Pension Sharing Order (**PSO**), he paid her half of his pension income every month. Mr G has confirmed that he initially did this on an entirely voluntary basis. In particular, there was no maintenance order or other formal agreement in place for this to happen until 2012. Mr G and his ex-wife finalised their divorce in 2011.
7. On 14 August 2012, a Consent Order was issued by the Court. The Consent Order stated:

“[Mr G] has continued to share equally with the Applicant all payments received under the [CLGPS]...and will continue to do so until the pension share in paragraph 2 below takes effect”.

8. Paragraph 2 then referred to an attached annex, which was the PSO. However, at that time the PSO was incomplete and could not be accepted. The PSO was finalised and sanctioned by the Court on 25 February 2013. The PSO stated that it would take effect from the later of:-
 - a) The date on which the Decree Absolute of Divorce or Nullity of marriage is granted, or the Final Order of the Dissolution or Nullity of civil partnership is made;
 - b) 28 days from the date of this order or, where the court has specified a period for filing an appeal notice, 7 days after the end of that period;
 - c) Where an appeal has been lodged, the effective date of the order determining that appeal.
9. As no appeal had been lodged, and as the parties had been divorced for over a year by the date of the PSO, (b) applied. The PSO took effect 28 days after it was dated, which was 25 March 2013. Mr G's ex-wife became entitled to half of his pension income with effect from this date. However, she did not actually start to receive payments from CCC until the PSO was fully implemented, and Mr G continued to receive the full amount of the pension meanwhile as normal.
10. The PSO allowed CCC four months to discharge their liability. The four month period was triggered on 11 March 2013, and so CCC had to discharge its liability by 10 August 2013. In other words, Mr G's ex-wife was to be paid by CCC, via YPS, directly by 10 August 2013.
11. On 11 March 2013, YPS wrote to Mr G and informed him that, if he was currently receiving his pension, then an overpayment would occur between the date of the Court Order and the date it was implemented.
12. On 11 April 2013, Mr G wrote back to YPS. In particular, he said that:

“Since May 2004 I have, entirely voluntarily, paid 50% (i.e. ½) of the net pension I have received into my now ex-wife's bank account...and am continuing to do so until the Pension Sharing Order is implemented”.
13. As part of this letter, Mr G argued that no overpayment had been made as he had been forwarding half his pension income to his ex-wife.
14. On 24 April 2013, YPS responded to Mr G's letter. It confirmed that an overpayment would occur as the pension was being paid directly to Mr G.
15. On 14 May 2013, the evidence indicates there was a telephone call between Mr G and YPS. However, there is no recording or transcript of this call. The only record is a

handwritten note by Mr G, on his copy of YPS' later from 24 April 2013. This note states:

"Spoke to Mr D Tues aft. 14/5. xplained [sic] to him I'd already handed over 50% of net pension each month [therefore] I'd not had any overpayment. Mr D remained adamant I'd recd [sic] overpayment. Said I no longer had the money [and therefore] couldn't repay it."

16. On 15 May 2013, Mr G sent YPS proof of the payments he had made to his ex-wife.
17. On 5 June 2013, YPS responded to Mr G's recent letter. In particular, the representative said:

"Please note that as the full pension has been paid to you I am obliged to recover any overpayment which occurs between the date of the Court Order and the implementation date from you. This is because the pension has been paid directly to you.

The payments that you have made to your ex-wife from your [pension] should be settled between yourselves."

18. A representative of CCC has also confirmed that she had a telephone conversation with Mr G in early June. She recalls that Mr G was adamant he had to continue making payments to his ex-wife at this time, and so she told him to seek legal advice. This is referred to in a later letter from CCC dated 4 November 2014.
19. The PSO was implemented just before the four month deadline and subsequently YPS informed Mr G that there had been an overpayment between 25 March 2013 and 31 July 2013. Mr G disputed this and highlighted that he told YPS/CCC he was paying half of his pension income to his ex-wife throughout that time. YPS and CCC have argued that they told Mr G at the outset there would be an overpayment and he would have to repay this.
20. Mr G believes he was obliged by the Court Order to continue paying his ex-wife half of his pension income until CCC started paying her directly. He also believes that CCC and YPS must deal with PSOs daily and as such they should be able to ensure CLGPS members such as himself receive clear and concise information.
21. Mr G highlights CCC's letter dated 4 November 2014 in support of his position, as it states "it has been accepted that the pension calculations could have been more clearly explained to you". However, CCC's and YPS' responses to the complaint also state that they feel they gave sufficiently clear information and that they were not obliged to advise Mr G further than they did.
22. Mr G argues that the PSO ought to have been implemented quicker. If it had been, he states the alleged overpayment would be smaller. Mr G notes that YPS took the full four months it was entitled to, when implementing the PSO. CCC states that this is

because YPS is responsible for thousands of CLGPS members and on this occasion it needed the time allowed to implement the PSO.

23. In addition, Mr G is also unhappy that CCC passed the matter to debt collection agents without giving any warning. However, he has confirmed that he received CCC's letter dated 20 January 2014, in which the representative stated:

"I note from our records that the above invoice remains outstanding. Please arrange immediate payment to prevent the matter being referred to the Council's debt recovery agency.

If you have any further queries please do not hesitate to contact our office".

24. Lastly, Mr G has highlighted that, even though he has now repaid the alleged overpayment, he has received several invoices chasing him for it.

Adjudicator's Opinion

25. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by CCC or YPS. The Adjudicator's findings are summarised briefly below:-

- The Adjudicator believes that the key to this dispute is Mr G's understanding of what he was obliged to do under the Consent Order, and whether CCC or YPS were aware of his understanding. In particular, the Consent Order did state that Mr G would continue to pay his ex-wife half of his CLGPS income until the PSO took effect. However, the PSO took effect on 25 March 2013 and Mr G continued to pay his ex-wife until July 2013. The Adjudicator believes Mr G interpreted "takes effect" in practical terms, believing he had to pay his ex-wife half of his CLGPS income until the PSO was implemented and CCC started paying her directly. This was not the case.
- The Adjudicator did not believe that CCC or YPS were reasonably aware that Mr G misunderstood his obligations. As such, she felt they had acted reasonably by not correcting his misunderstanding. In particular, the Adjudicator noted that Mr G had consistently told YPS and CCC that he was going to keep paying his ex-wife. However, this is not the same as Mr G saying he believes he must pay his ex-wife until CCC or YPS do.
- The Adjudicator noted that Mr G feels he did not receive an overpayment, because he sent the money in question to his ex-wife. However, the Adjudicator was satisfied that Mr G had still received the money in the first instance. The fact that he had then forwarded it to his ex-wife does not mean he had not received it.

- The Adjudicator noted that it had taken four months for the PSO to be implemented, but highlighted that this was the timeframe specifically allowed by the PSO for the implementation. As such, she did not find maladministration based on this.
- The Adjudicator was satisfied that Mr G ought to have been reasonably aware his debt may be passed to a debt collection agency. She did feel that CCC should have ensured no further invoices were sent once Mr G had repaid the overpayment; however, she noted that CCC had offered £100 for this error and she felt this was reasonable.

26. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G provided his further comments which do not change the outcome. In particular, he has raised the following points:-

- Mr G believes that CCC and YPS knew all along that he had misunderstood his obligations. He highlights that they deal with PSOs every day and therefore ought to have realised what was happening and remedy it before the overpayment accrued.
- Mr G believes he should have been provided clearer information when he spoke with YPS and CCC over the telephone. He has also reiterated that he told CCC and YPS he would continue to make payments to his ex-wife, and they ought to have realised from this that he had misunderstood his obligations.
- Mr G has emphasised that CCC stated in its letter dated 28 August 2013 that the explanations he received "should have been made more clear". He believes this supports his position, as CCC is acknowledging it should have done more.
- Mr G has reiterated that he was not expecting the matter to be passed to debt collection agents. He acknowledges that he received CCC's letter dated 20 January 2014, but states he had already been told that the matter would be placed on hold. He therefore believed this letter to be a mistake.

27. I agree with the Adjudicator's Opinion and I will only respond to the key points made by Mr G for completeness.

Ombudsman's decision

28. There is no evidence that CCC or YPS knew, before it was suggested by the Adjudicator, that Mr G had misunderstood his obligations under the Consent Order.
29. There would be no advantage for CCC or YPS in not highlighting Mr G's misunderstanding if they had been aware of it. In any event, I find they were obliged to implement the PSO as it was directed to them, and to explain to Mr G any

overpayment which would result, which is what they did. They were not required to give Mr G advice about the extent of his obligations under the consent order. In particular they were not required to advise him whether or not he needed to continue to make payments to his ex-wife during the window which CCC had been given to implement the PSO. That was a matter for Mr G's solicitors I am therefore satisfied that CCC and YPS did what was reasonable by insisting that there would be an overpayment and suggesting that Mr G take legal advice on the effect of the consent order.

30. It is unfortunate that the telephone recordings from the conversations in May and June 2013 are unavailable. However, as they are not available, I cannot make any conclusions about what reasonably ought to have been understood by YPS or CCC during them. I am therefore unable to conclude that YPS or CCC ought to have been clearer during these conversations.
31. Mr G clearly informed YPS and CCC several times that he would be continuing to pay half of his pension income to his ex-wife, whilst the PSO was being implemented. However, on its own, this would not lead YPS or CCC to realise that he was only doing so because he believed he was obliged to. Mr G had stated what he was going to do, but not why he was going to do it. I am satisfied that YPS and CCC acted reasonably by continuing to respond that an overpayment would occur.
32. I believe Mr G has tried to do the right thing throughout this matter. However, CCC and YPS have also done all they were required to do, and I do not consider that they reasonably ought to have done more.
33. Mr G places significant weight on CCC's letter dated 28 August 2013. This letter provided a full explanation of how the PSO was implemented with full workings of the request for repayment corrected to reflect the effective date, and offered a repayment plan. It answered a series of technical questions about the method of calculation behind the implementation and explained that the voluntary contributions made to Mr G's ex-wife could not be taken into account in calculating the overpayment; these would need to be addressed as between them. In that context the writer of the letter apologised that Mr G had not received sufficiently clear and concise information previously. But I do not read from that letter any admission that CCC were aware of the reasons why Mr G had continued to make payments to his wife after the effective date of the PSO, or any admission that they should have advised him not to. Overall, whilst there may have been more CCC could have done, I do not consider there is more it should have done.
34. Lastly, Mr G has reiterated that he was shocked when he discovered this matter had been passed to a debt collection agency. He states that, by this point, it had been agreed no more invoices would be sent to him. However, there is no evidence of an agreement that no demands would be sent at all, only that time would be given to repay. Mr G has stressed that he did not ignore the issue and was trying to get the overpaid money back from his ex-wife. I accept that, but I can also see why in the absence of further contact from Mr G about his intention to repay CCC made further

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contact seeking recovery. I do not generally direct awards of less than £500 for non-financial loss. I acknowledge that Mr G may have been caused some distress when he received a letter from the debt collection agency; however, I do not believe that £500 is warranted.

35. Therefore, I do not uphold Mr G's complaint.

Karen Johnston

Deputy Pensions Ombudsman
8 August 2017