

## Ombudsman's Determination

Applicant	Mr K
Scheme	Medical Research Council Pension Trust ( <b>the Scheme</b> )
Respondents	MNPA Limited ( <b>MNPA</b> ), MRC Pension Trust Limited ( <b>the Trustee</b> )

## Outcome

1. Mr K's complaint against the Trustee 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 Trustee should pay Mr K £500 for the significant distress and inconvenience it caused him.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr K has complained that his pension has been overpaid as a result of an error, which was no fault of his own, yet the Trustee has requested recovery of the overpayment. He feels that the Trustee should not be able to seek recovery of the overpayment as he received it in good faith and could not have been aware of the error.

## Background information, including submissions from the parties

4. Mr K was in receipt of a pension from the Scheme which included a fixed rate Industrial Injury Allowance (**the Allowance**) of approximately £500 per month. Mr K is the only Scheme pensioner in receipt of such an allowance, meaning that manual intervention is required in order to calculate Mr K's pension increases.
5. The administrators at the time, MNPA, adopted a practice of manually excluding the Allowance from his record, running the automated pension increase software and then manually including the Allowance again.
6. Unfortunately, when applying the 2011 pension increase effective from 11 April 2011, the Allowance was not excluded. The Allowance was then erroneously included again after the pension increase exercise had been completed, meaning that it was incorrectly increased as well as double counted.

7. Mr K was provided with a pension increase statement showing the correct 2011 increase and the correct gross pension entitlement going forward. This was quoted as £17,301.24 gross per annum and £1,441.77 gross per month. However, Mr K received £1,732.30 net per month. Further, every pension increase statement (**the Statements**) which followed showed the correct entitlement. For example, in the April 2015 statement, for a gross annual income of £18,950.16, approximately £1,575.00 gross per month was shown. Yet, during this time Mr K received £1,814.11 net per month.
8. When the overpayment first occurred Mr K was receiving monthly payslips, however the frequency changed to annual payslips over the course of the overpayment period. The payslips showed the actual amounts that Mr K was receiving, before and after tax, rather than the correct amounts he should have been receiving, as shown on the Statements.
9. From 11 April 2011 until August 2015, when the error was noticed and rectified by the then administrators, JLT, Mr K received an overpayment of his pension. The total overpayment amounts to £21,616.15 and the Trustee has requested that Mr K repays this over a 54 month period.
10. Mr K has attempted to demonstrate that he changed his position in that he purchased a shared ownership retirement home in Bath, near to his daughter. He already owned a family home in London in which he had been living. He says that the Bath home was a luxury that he thought he could afford based on the monthly income he was receiving from the Scheme. He has shown that he took mortgage advice and was offered a mortgage based on the income shown on his payslips.
11. The Trustee says that there is no valid defence against recovery of the overpayment as it was reasonable that Mr K should have been aware of the overpayment, and it would have been reasonable for him to have questioned it. In any event, the Trustee does not agree that Mr K has shown a change of position.

## **Adjudicator's Opinion**

12. Mr K's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-
  - The Adjudicator considered whether it was reasonable for Mr K to have relied on the higher pension paid, in good faith or reasonable for him to have noticed the error, and if there is any defence against recovery of the overpayment.
  - The most common defence against recovery of an overpayment is referred to as "change of position". Mr K has presented a change of position defence against recovery of the overpayment, however, Mr K was provided with the Statements when increases were payable. The Statements provided the correct pension entitlement in gross annual and monthly figures, while the net figures that Mr K

was receiving, and the gross and net figures shown on the payslips, were significantly higher than the gross figures shown in the Statements. Between April 2011 and March 2012, the payments he received equate to approximately £23,700 gross. Whereas the Statements showed an annual pension of £17,301.24 gross. This is a difference of more than £6,000. A similar situation can be found in the years which followed, up until August 2015 when the overpayment was identified and Mr K's pension was returned to the correct level.

- Up until April 2011, the amount stated in the Statements, the payslips, and the amount paid were identical, allowing for the difference between net and gross figures. From April 2011 onwards, the amounts paid and shown on the payslips were substantially higher than the gross values shown in the Statements.
- It was acknowledged that the administrator stopped providing monthly payslips during the period that the overpayment occurred. Nevertheless, monthly payslips were provided in 2011 when the overpayment began, and annual payslips were provided thereafter. In addition, bank statements would have shown that the net figures received exceeded the gross figures shown on the Statements.
- Following this, the Adjudicator said that Mr K ought to have reasonably been aware of the error. He was receiving payments in excess of the monthly amounts shown on the Statements, even after the deduction of tax. In the least it would have been reasonable for Mr K to query the differences, but there is no evidence that he did. Without reasonable reliance in good faith, the change of position defence cannot succeed. Therefore, the Adjudicator did not consider it necessary to examine the evidence that Mr K has submitted to show reliance to his detriment.
- Defence against recovery under the Limitation Act 1980 was also considered, which states that recovery of overpayments must be initiated within six years of discovery of the mistake, or the time that the claimant could have discovered it with reasonable diligence.
- In the recent High Court case of *Webber v Department for Education* and another [2016] EWHC 2519 (Ch), the Judge held that the cut-off date for limitation purposes, in overpayment cases before the Ombudsman, was the date when Teachers Pensions brought its claim during the course of The Pensions Ombudsman's complaints procedure. That date was identified as being the receipt by The Pensions Ombudsman of Teachers Pensions' response to Mr Webber's complaint.
- Applying this to Mr K's case, the Trustee's response to Mr K's complaint was received by The Pensions Ombudsman on 27 March 2017. For the purposes of the Limitation Act this is the date at which time ceased to run. The question is, therefore, whether the Trustee made its claim for repayment within the applicable limitation period.

- Having considered the sequence of events and the information provided, it follows that time started to run on 11 April 2011 when the overpayment began accruing. The Adjudicator said it was reasonable for the mistake to have been noticed at this time. Therefore, the Trustee had until 11 April 2017 to make its claim for recovery of the overpayment. In fact, the Trustee made its claim on 27 March 2017 and so, the Trustee is able to recover the whole overpayment from Mr K.
  - Following this, and consideration of the other possible defences which the Adjudicator concluded do not apply, none of the defences against recovery apply and the overpayment can be recovered.
  - Mr K has commented that the repayment plan is unreasonable as he does not have sufficient income to pay his mortgage payments, bills and the repayment. The Trustee has already offered the option for the repayment to be recovered over at least the same period as it occurred. If this is not acceptable to Mr K, the Adjudicator suggested that he provides the necessary information to the Trustee to allow a means test to be carried out and a more suitable repayment plan agreed.
  - In the Adjudicator's opinion the error which resulted in the overpayment, along with the time taken to notice and correct the error and subsequent recovery requests, would have caused Mr K significant distress and inconvenience. The Adjudicator recommended that the Trustee pay Mr K £500 in respect of this.
13. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which are summarised below:-
- Mr K has said that it was him that noticed the error between December 2014 and January 2015 and that he called JLT and queried the payments in January 2015. He then called again on 17 June 2015 and was informed that the matter was under investigation. He says he heard nothing further until he received the letter at the end of July 2015 which notified him of the overpayment and requested recovery.
  - Mr K maintains that he had entered financial commitments in good faith by this time but that he feels he should not be liable for the whole overpayment as it was him that brought the error to JLT's attention. He says if it was not noticed as a result of his enquiries why was his record being reviewed at all.
  - Mr K says he believes he has shown change of position.
14. The comments 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 K for completeness.

## **Ombudsman's decision**

15. The Trustee has confirmed that JLT does not hold a record of any telephone calls from Mr K from April 2011 to present. It says that all correspondence it holds in relation to the overpayment has been written, from both it and Mr K.
16. In any event, I do not consider that the reason the overpayment was eventually discovered can give rise to Mr K having a right to keep that overpayment.
17. I acknowledge that Mr K noticed the error a number of years into the overpayment, but there is no evidence to suggest that Mr K was in receipt of additional information in December 2015 that he did not already have in previous years.
18. For a change of position defence to succeed, there must be detrimental reliance in good faith and I do not consider that the good faith requirement has been met in this case. Whilst I take into account that prior to 2015 Mr K may not have been aware he was receiving an overpayment, the good faith requirement does not just concern what the applicant knew at the relevant time, but what they ought to have known. I find that there was sufficient information available to Mr K for him to have reasonably been aware of the error or, in the least, to have questioned the payments he received at an earlier date. This means that there is no reasonable reliance in good faith. As a result it is irrelevant if his expenditure would otherwise show it was to his detriment and support a change of position defence.
19. Nevertheless, I agree that maladministration has occurred and that this would have caused Mr K significant distress and inconvenience. As the administration of the Scheme is the Trustee's responsibility, the Trustee shall award Mr K with £500.
20. Therefore, I partly uphold Mr K's complaint.

## **Directions**

21. Within 21 days the Trustee shall pay Mr K £500 for the significant distress and inconvenience it caused Mr K.

**Karen Johnston**

Deputy Pensions Ombudsman  
20 December 2017