

## Ombudsman's Determination

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| Applicant  | Mr Y  |
| Scheme     | Royal Mail Statutory Pension Scheme ( <b>the Scheme</b> ) |
| Respondent | The Royal Mail Statutory Pension Scheme ( <b>RMSPS</b> )  |

## Outcome

1. Mr Y's complaint against RMSPS 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) RMSPS should write off the overpayments that are subject to the limitation defence. RMSPS is able to recover overpayments made on and after 31 January 2012. RMSPS should also pay Mr Y the £500 previously offered.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y disagrees with the recovery of an overpayment of pension from the Scheme to which RMSPS state that he is not entitled. The amount RMSPS are seeking to recover is £7,752.83.

## Background information, including submissions from the parties

4. Mr Y was a member of the Scheme (formerly known as the Post Office Staff Superannuation Scheme) from 16 May 1983 to 25 June 1988. He requested to become a deferred member from 16 June 1988. He left the Scheme with 5 years and 32 days membership.
5. On 13 March 1989, Mr Y wrote to the then scheme administrators requesting a transfer of his benefits to Equitable Life. He said, "I am appealing against the rule which states that after 5 years of service the fund is not transferrable. The main reason for the appeal [is] that I do not see my long term future with the Post Office, it is only 33 day[s] over the five years in the scheme". Mr Y was sent a response dated 22 May 1989, agreeing that the transfer would be made on an exceptional basis.
6. Mr Y signed the transfer request form on 4 June 1989 and declared:

"I hereby request the payment of the cash equivalent of my accrued pension rights in the Post Office Staff Superannuation Scheme to the person pension scheme operated by Equitable Life Assurance. I understand that upon such payment no further benefits will remain in the Post Office Staff Superannuation Scheme and hereby discharge the Trustees of all liability to any benefits for me or my dependents."

7. A transfer of £4,335.79 was sent to Equitable Life on 27 June 1989.
8. RMSPS state that between 1990 and 2010 it continued to send Mr Y details of deferred benefits from the Scheme. It states that when the system was automated in 1990, Mr Y's records were not updated to reflect that his benefits had been transferred out. Mr Y has also submitted that he continued to receive regular updates from the Scheme, but "I did not once think this was incorrect I accepted that these statements were gospel".
9. In December 2010, the Pension Service Centre (**PSC**) (the administrators of the Scheme) wrote to Mr Y to start the retirement process. Mr Y signed the pension option form on 28 January 2011, selecting to take the maximum tax-free cash lump sum and pension. This was paid from March 2011.
10. On 7 September 2017, RMSPS stated that PSC wrote to Mr Y informing him that he was not eligible to receive any benefits from the Scheme. Therefore, his monthly pension of £93.33 would stop and it would seek recovery of an overpayment.
11. Mr Y wrote to PSC to complain on 14, 15 and 18 September 2017. RMSPS say that Mr Y raised the Limitation Act 1980 (**the Act**) as a defence against the recovery of the overpayment.
12. PSC considered M Y's complaint under the Scheme's internal dispute resolution procedure (**IDRP**) and did not uphold it. It recognised that Mr Y had received incorrect information, but as he was not entitled to any benefits, it was bound to seek recovery of the overpayment. In relation to the Act, it said:

"In your letter dated 14 September 2017 you have indicated that information given to you by The Pensions Advisory Service confirmed that '*If the mistake that led to an overpayment was made more than six years ago, it may be possible that overpayments made more than six years from when you were told of the mistake, do not need to be repaid.*' The RMSPS has agreed that the Limitations [sic] Act 1980 applied to the recovery of the overpayment in this circumstance which means that they are only seeking to recover payments made in the last six years, i.e. after 1 October 2011. I can confirm that the amount paid to you in error is £7,752.83."
13. PSC also acknowledged that the repayment period is usually the same length as the length of the overpayment, but it was willing to be flexible and agree a repayment plan with Mr Y. It also offered Mr Y £500 to recognise the distress and inconvenience caused by the error.

14. After contacting this service in October 2017, Mr Y raised a complaint under the second stage of the IDRPs with RMSPS. It replied on 30 November 2017, agreeing with the decision of PSC. It also reconfirmed the offer of £500. In relation to the Act, it stated:

“Also on this point RMSPS accepts that they should not seek recovery of the full amount that has been overpaid to Mr Y due to the Limitations [sic] Act 1980 and is therefore limiting recovery to pension payments made after 1 October 2011. If the PSC had acted diligently, they would have been aware of the mistaken payments much earlier (likely from the date of bringing the benefits into payment) and the State of Limitations [sic] Act (1980) will exclude recovery of any payments made before 1 October 2011.”

15. Mr Y remained dissatisfied with the outcome of the IDRPs and he made a formal complaint to this service on 5 January 2018. As part of the investigation process, RMSPS were asked to provide a formal response to the complaint, which was received on 31 January 2018. It reiterated the decisions made under the IDRPs and it was still open to reaching an agreement that would suit Mr Y's circumstances. It highlighted that, under the Scheme rules, Mr Y was no longer entitled to a pension following a transfer out:

“Rule 11(5) of the Postal Services Act 2012 states; once a cash equivalent transfer value of a member's preserved benefits has been paid from the scheme, the Secretary of State is discharged from any obligation to provide benefits to which the cash equivalent related. As such the pension payments were rightly stopped once the error had been identified.”

16. Details of the defences against the recovery of overpayments (as outlined in HM Treasury's document “Managing Public Money” – Annex 4.11<sup>1</sup>) that RMSPS would consider were also outlined.
17. Mr Y was provided with a copy of RMSPS' 31 January 2018 letter and asked to provide details and evidence of any further defences, besides the Act, that he would like considered. He replied that the request for repayment of the overpayment came as a shock, as he had no idea that he was being overpaid, especially as he had been in receipt of regular updates from the Scheme and, because he had another pension payable from the Scheme, he did not think to question it. He stated that the additional funds had been used towards everyday expenses and he had accepted the money in good faith. The subsequent debt to the Scheme has caused upset to him and his family. Finally, he stated that he has had to cut down on monthly expenses and highlighted that he has a health condition which means that he has to spend more on heating.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/742188/Managing\\_Public\\_Money\\_MPM\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money_MPM_2018.pdf)

## Adjudicator's Opinion

18. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by RMSPS. The Adjudicator's findings are summarised briefly below:-

- As there was no dispute that an error had occurred, the Adjudicator considered whether Mr Y had a defence against recovery, including whether he had changed his position based on the higher amount, as well as the application of the Act.
- The Adjudicator's opinion was that the defence of change of position did not apply to Mr Y. This was because Mr Y had specifically appealed to the administrators of the Scheme in 1989 to allow the transfer to Equitable Life, he had signed a declaration acknowledging that he no longer had any benefits in the Scheme, yet within a year of the transfer he did not question why he was still receiving information about benefits he knew were no longer in the Scheme. It was the Adjudicator's view that Mr Y ought to have appreciated that the information sent to him after the transfer was incorrect and sent in error, and that he was not entitled to the payments he later received from the Scheme. He could have made a simple enquiry of the Scheme to check the position, but chose not to do so. The fact that he was also in receipt of another benefit from the Scheme also should have raised his concerns as to why he was receiving a benefit for a period of service he knew had been transferred out and he ought to have questioned this further with PSC.
- The Adjudicator agreed with the parties that the Act was an applicable defence and that RMSPS, with reasonable diligence, ought to have discovered the mistake before benefits were paid to Mr Y. As these were paid from March 2011, the limitation period under the Act started running from the date the overpayments began.
- In court proceedings, the "Limitation Act clock" stops when the claim form is issued. In the case of a complaint referred to the Pensions Ombudsman, the High court has decided that the 'cut off' date is the date when the Ombudsman receives the respondent's response to the complaint. In this case, the Ombudsman received RMSPS' response to Mr Y's complaint on 31 January 2018. Therefore, it was the Adjudicator's opinion that RMSPS could not recover the sums paid to Mr Y before 31 January 2012 and are only entitled to seek recovery of overpayments made after 31 January 2012.
- The Adjudicator's view was that the offers made by RMSPS (£500 and to consider any financial hardship caused to Mr Y and make a suitable repayment plan) were reasonable and, should Mr Y accept, to contact RMSPS directly.

19. RMSPS accepted the Opinion, but Mr Y provided further comments. In relation to the outcome of the Opinion, Mr Y has said:

“I was not aware anything was wrong with the pension monies that I was receiving, had I been aware for one moment that something was amiss I would have flagged this up and would not find myself in the situation I now find myself in.

From reading your missives from Day one your opinion has not changed, you don't believe that I could have not been aware of the transfer out and on the receiving of regular statements, but that's what did happen and I can't alter that.

To reach a fair conclusion to this matter Royal Mail have admitted to an error which has resulted in me being in debt. If as you say I am to blame for my lack of diligence when it comes to admin capabilities then we are both to blame.”

20. The complaint has been passed to me to consider. Mr Y's 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 Y for completeness.

### **Ombudsman's decision**

21. I empathise with Mr Y's frustration that the error was caused by RMSPS and that he is now liable to repay money he says he accepted in good faith. However, as has been explained to him by the Adjudicator, legally, he does not meet the “good faith” criteria. From the evidence provided, he asked for an exception to be made to allow the transfer, knew that the transfer had taken place, yet failed to question subsequent correspondence he received from RMSPS after he had transferred out. While he says that he was not aware that anything was wrong, the evidence shows that he should have been aware as far back as 1990, that there was a possible issue with the information he was receiving from RMSPS and that he failed to take action to question it.
22. Mr Y is right that both parties have a responsibility to make sure that the benefits being paid and received are correct. In this instance, RMSPS have recognised this and have offered Mr Y £500. I am satisfied that this is a reasonable award in respect of the distress and inconvenience caused to Mr Y.
23. The Opinion and this Determination do not absolve RMSPS of any maladministration and, in fact, agree that maladministration occurred. However, legally, RMSPS is entitled to seek recovery of funds that Mr Y is not entitled to. He had the funds with Equitable Life and was receiving a benefit from the Scheme and he is not entitled to benefit from the error in that way, even if he feels this is unfair.
24. While Mr Y has not been able to prove a change of position defence, RMSPS have agreed with his earlier argument that the Act does apply. As noted by the Adjudicator, the recovery period should start from any overpayments made after 31 January 2018. I therefore, partly, uphold the complaint.

**Directions**

25. Within 21 days of the date of this Determination, RMSPS shall:

- Recalculate the overpayment owed by Mr Y to reflect that RMSPS are only entitled to recoup any overpayments made on and after 31 January 2012, and inform him of the new amount; and
- Pay Mr Y the £500 previously offered.

**Karen Johnston**

Deputy Pensions Ombudsman  
8 May 2019