

## Ombudsman's Determination

Applicant	The Estate of Mr S ( <b>the Estate</b> )
Scheme	Police Pension Scheme ( <b>the Scheme</b> )
Respondent	South Wales Police

## Outcome

1. I do not uphold the Estate's complaint and no further action is required by South Wales Police.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. The Estate's complaint against South Wales Police is brought by the late Mr S's wife (**Mrs S**). The complaint concerns Mrs S' widow's pension being reduced as she married Mr S after he retired. Mrs S believes that the South Wales Police had a duty of care to advise Mr S to postpone his retirement until after he married Mrs S, so her widow's pension would not be reduced.

## Background information, including submissions from the parties

4. Mr S joined the Scheme in May 1959.
5. On 26 May 1991, Mr S retired from service and left the Scheme. He married Mrs S on 14 June 1991.
6. Sadly, Mr S passed away in July 2016. Upon enquiring about her entitlement to a widow's pension, Mrs S discovered that because her marriage to Mr S occurred after he retired, her widow's pension is lower than what she would have received if she had married Mr S whilst he was employed by South Wales Police. Mrs S subsequently complained to South Wales Police about the reduction in her widow's pension.
7. South Wales Police responded to Mrs S in October 2016. In summary, it explained that prior to 1978, a widow who had married a Police Officer post retirement would not be entitled to a widow's pension. A provision was introduced in 1978 to award post retirement widows such entitlement. However, this provision was not

retrospective, meaning only Mr S's post 1978 service would be included in the calculation of Mrs S's widow's pension. South Wales Police said the Scheme Regulations do not permit any discretion in the matter, but she could contact the Home Office through her local MP to review her individual circumstances.

8. Mrs S wrote to the Home Office in November 2016, and argued that had Mr S been made aware by South Wales Police that marrying post retirement would result in a reduction in Mrs S's widow's pension, he would have delayed his retirement until after they had wed.
9. In December 2016, the Home Office responded to Mrs S. It explained in relation to the provision introduced in 1978:

“The change did not apply to service prior to 6 April 1978 or to people who were already police pensioners on that date. Providing pensions for such police widows would mean a retrospective improvement for members of the 1978 police pension scheme. I hope you will understand that routine back-dating of all pension scheme improvements negotiated by the current workforce as part of their remuneration would have serious implications for pension schemes across the whole of the public sector. The Government has a duty to ensure public service pensions are sustainable and fair for both the workforce and taxpayers.”
10. After further correspondence with the Home Office and her local MP, Mrs S referred the complaint back to South Wales Police, invoking its Internal Dispute Resolution Procedure (**IDRP**). Mrs S argued that South Wales Police had a duty of care to inform her husband to postpone his retirement until after his marriage.
11. South Wales Police responded to Mrs S in October 2017 with its IDRP decision. In summary, it said that the Scheme Regulations had been correctly applied to Mrs S, and it was the responsibility of Mr S to have sought independent advice prior to retirement.
12. Mrs S brought her complaint to this office, maintaining that South Wales Police should have informed Mr S of the impact that marrying post retirement would have on her widow's pension. Mrs S highlighted the how the reduction has affected her lifestyle.
13. The relevant extract from the Scheme Regulations is set out in the appendix.

## **Adjudicator's Opinion**

14. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by South Wales Police. The Adjudicator's findings are summarised briefly below:-

- Whilst sympathetic with the position Mrs S finds herself in, the Adjudicator did not believe South Wales Police had a duty of care to inform Mr S how the date of his marriage would result in the reduction of Mrs S's widow's pension.
  - Furthermore, the onus would have been on Mr S to seek independent financial advice in relation to his retirement planning.
15. Mrs S, on behalf of the Estate, did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key point made by Mrs S for completeness, which is set out below:-
- The timescale between Mr S's retirement and his marriage to Mrs S was only two weeks. Therefore, Mrs S feels that given the small timescale, her case should be made an exception and be granted a full widow's pension.

### **Ombudsman's decision**

16. I appreciate that it was only two weeks between Mr S's retirement and his subsequent marriage to Mrs S and how frustrating this must be for Mrs S, however, Mrs S is arguing that South Wales Police had a duty of care to advise Mr S that marrying post retirement would result in a reduction in her widow's pension. This is not an activity South Wales Police are regulated to carry out..
17. Furthermore, the Court of Appeal held in the case of *Outram vs Academy Plastics Ltd* [2000] that there is no general or contractual duty in law for employers to provide advice to prevent economic loss, and the absence of such duty extends to pension scheme membership.
18. Mrs S has said that she should be allowed to be exception due the short time between Mr S's retirement and his marriage to Mrs S. I sympathise with Mrs S, however, there is no provision in the Regulations which permit an exception to be made and although the marriage took place very shortly after Mr S' retirement, nevertheless it was following his retirement and so the Regulations apply in respect of the level of widow's pension to be paid. Mrs S has been awarded a widow's pension correctly calculated in accordance with the Scheme Regulations.
19. Therefore, I do not uphold the Estate's complaint.

**Anthony Arter**

Pensions Ombudsman  
27 March 2018

## Appendix

### **C5Limitation on award to widow with reference to date of marriage and pension in case of post-retirement marriage**

- (1) A widow shall not be entitled to a widow's ordinary or accrued pension under Regulation C1 or C4 unless she was married to her husband during a period before he last ceased to be a regular policeman.
- (2) A widow shall not be entitled to a widow's special award under Regulation C2 unless she was married to her husband during a period—
  - (a) before he last ceased to be a regular policeman, if he received the injury while serving as a regular policeman;
  - (b) before the end of the continuous period of service during which he received the injury, in any other case.
- (3) A widow of a regular policeman who, but for paragraph (1) or (2) (a), would be entitled to an award under Regulation C1 , C2 or C4 shall, instead, be entitled to a pension calculated in accordance with Part IV of Schedule C subject, however, to Regulation E8 (increase during first 13 weeks).