

Ombudsman's Determination

Applicant	Mr R
Scheme	Police Pension Scheme (the Scheme)
Respondent	Metropolitan Police Service (MPS)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by MPS.

Complaint summary

2. Mr R has complained that:
 - MPS has misinterpreted the Scheme Regulations; and
 - failed to provide him with sufficient information for him to make an informed decision on taking unpaid leave.

Background information, including submissions from the parties

3. The relevant regulations are found in The Police Pension Regulations 1987 (SI1987/257) (as amended) (the **1987 Regulations**). Extracts from the 1987 Regulations are provided in Appendix 1.
4. Mr R was automatically enrolled in the Scheme when he joined the Police Service in September 1990.
5. Mr R applied for special unpaid leave in September 1997. He explained that he wished to use the time to travel and broaden his horizons, which would help with his long-term aim to study for promotion. Mr R confirmed that he was familiar with Special Notice 4/96 Paras. 5.1 to 5.7 inclusive. Paragraph 5.5 stated:

“During a period of special leave off pay individuals will continue to be regarded as employed by the MPS ...

Special leave off pay does not qualify as reckonable service for pension ...
6. In February 2007, Mr R applied for unpaid parental leave. He explained that his partner had returned to work after maternity leave and he needed to take greater

responsibility for his two sons. Mr R confirmed that he had read the Human Resources Standard Operating Procedure (**SOP**) relating to special leave. This stated:

“Unpaid special leave, unless otherwise stated i.e. for parental leave, does not qualify as reckonable service for pension ... purposes. Unpaid special leave will affect future pension entitlements.”

7. The Scheme Guide (2006 version)¹ stated:

“Unpaid absence

Your pensionable service may be affected by any periods of unpaid absence. In general, periods of absence can only count as pensionable service (see section 4.3) if pension contributions are paid in respect of the period of absence. Sick leave on full pay or reduced pay and paid maternity leave, maternity support leave and adoption leave count towards pensionable service if pension contributions are paid for those periods.

Unpaid leave, other than the first 26 weeks of maternity leave, can only count as pensionable service if you pay the pension contributions which would otherwise have been due². You are only able to do this for periods of unpaid maternity or parental leave ... If you wish to pay contributions under these circumstances, you must notify the Police Pension Authority within three months of your return to work, or by the date you leave the service if that is earlier ...

Pension contributions cannot be paid in respect of unpaid career breaks.”

8. Section 4.3 described “pensionable service” as “the service that counts in the calculation of your pension”.
9. A summary of Mr R’s pension service record is provided in Appendix 2.
10. In 2015, Mr R made enquiries about retiring. He has explained that he looked at the Scheme guide and understood that his part-time working and unpaid leave had put back the date on which he could retire. Mr R has explained that he spoke to Equiniti, which administers the Scheme, and was initially told he would be able to retire with an immediate pension. He says that he called Equiniti back to double-check this and was told he did not have the required 25 years’ service. MPS subsequently informed Mr R that he would have been able to ‘buy back’ his unpaid leave in 2007/08 but that he would have had to have done so within three months of his return to work.
11. Mr R has referred to MPS’ Special Leave SOP. The 2015 version states: “... unpaid Parental Leave does not automatically count as pensionable service. However,

¹ ‘The Police Pension Scheme 1987 Members’ Guide’. Also referred to as Book 176.

² Regulation F1(1B) and (1D).

officers only may have an option to buy back this unpaid service on return to the MPS. Enquiries should be made to ...”

12. Mr R retired on 7 January 2017. His retirement benefits were pro-rated to account for his part-time service.

Mr R's position

13. Mr R has made extensive submissions in support of his case. It would not be practical, or helpful, to reproduce them in full in this document. The salient points are summarised as follows:-
- 13.1 MPS has misinterpreted the 1987 Regulations, he worked one year and sixteen weeks longer than he needed to. He has been prevented from receiving the pension he might have received over that period.
- 13.2 He does not believe that the information available to him at the time he decided to take unpaid leave enabled him to make an informed decision. Had he been aware of MPS' interpretation of the 1987 Regulations, he would have reduced his hours rather than taken unpaid leave. The lack of information cost him sixteen weeks of his time and the associated pension.
- 13.3 He has read a number of Court judgments which he considers to be relevant to his case: Marks & Spencer v BNP Paribas; Arnold v Britton; The Merchant Navy Ratings Pension Fund Trustees Ltd v Stena Line Ltd and Simpson [2012] EWHC 808 (Admin). The latter dealt with Home Office Circular (**HOC**) 46/2004. He has also researched the Financial Ombudsman's approach to non-advised Payment Protection Insurance (PPI) cases because he considers these to be similar to his own case.
- 13.4 He does not dispute that unpaid leave and career breaks do not count as 'reckonable' service. However, he does not accept that any reference to 'pensionable' service in the 1987 Regulations and other documents is interchangeable with 'reckonable' service. The inconsistent use of the terms 'reckonable', 'pensionable' and 'qualifying' service is the crux of his complaint.
- 13.5 If, as MPS argues, the 1987 Regulations are the only document of importance, the fact that the 1987 Regulations do not use the term 'reckonable service' undermines MPS' case.
- 13.6 He does not agree that HOCs 31/2005 and 33/2003 are irrelevant to his case. HOCs are produced by the Home Office which is responsible for the 1987 Regulations and, effectively, instruct those responsible for the Scheme administration on how to interpret the 1987 Regulations.
- 13.7 HOC 33/2003 contains information which provided him with an understanding of the term 'reckonable service'. He acknowledges that

33/2003 does not cover unpaid parental leave, which did not exist at the time, but he sees no reason why the same principles should not apply. 33/2003 states: “pensionable service is normally only reckonable if contributions are made in respect of it” and “There is no statutory right to additional maternity leave counting as reckonable service, although it counts as qualifying service and is therefore not to be regarded as a break in continuity of pensionable service”.

- 13.8 The use of both ‘reckonable’ service and ‘pensionable’ service indicates that the terms are not interchangeable. He has highlighted other references to the use of ‘reckonable’ service and ‘pensionable’ service in 33/2003.
- 13.9 HOC 33/2003 also states: “The period spent on career break should therefore be treated as qualifying (but not reckonable) service”. This indicates that ‘qualifying’ service and ‘reckonable’ service should not be considered one and the same thing.
- 13.10 HOC 31/2005 introduced a change in the type of service needed for a part-time officer to retire at age 50 with an immediate pension from 25 years’ ‘reckonable’ service to 25 years’ ‘calendar’ service. It did not define ‘calendar’ service, but does use ‘calendar’ and ‘qualifying’ to denote the same thing (paragraph 17 of HOC 31/2005).
- 13.11 The Work/Life Balance Policy states: “Unpaid leave, except for mobilised staff, maternity/adoption support leave and parental leave, is not reckonable for service and can affect pension ... entitlement”. He considers that this suggests that unpaid parental leave is reckonable. MPS has not addressed the adequacy or accuracy of this document.
- 13.12 MPS has referred him to the MPS Special Leave SOP. This document does not provide much meaningful information.
- 13.13 The Scheme Guide³ does not provide the information necessary for an office to make an informed decision. He does accept that there is information suggesting that unpaid leave does/may/generally affects ‘pensionable’ or ‘reckonable’ service. He does not consider that the different effect of unpaid leave and part-time working on an officer’s pension is made clear.
- 13.14 MPS has referred to Regulations B1 and F1 in the 1987 Regulations and The Police Pensions (Part-time Service) Regulations 2005 (SI2005/1439) (the **Part-time Regulations**).
- 13.15 The key phrase in Regulation B1(1) is: “entitled to reckon at least 25 years’ pensionable service”. The 1987 Regulations do not use the phrase

³ Mr R has confirmed that he only has a copy of the post-2006 version.

‘reckonable service’. The Part-time Regulations state: “In determining the number of years of pensionable service that the policeman is “entitled to reckon” or to have “completed” for the purposes of the provisions specified in sub-paragraph (1C) ...”. This can only be construed as “entitled to reckon” means the same as “completed”.

- 13.16 The 1987 Regulations do not define “pensionable service”. He has referred to Section 124(1) of the Pensions Act 1995. Section 124 states: “in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member ... for pension or other benefits under the scheme”. He considers it reasonable and equitable to use the statutory definition of ‘pensionable service’.
- 13.17 Regulation F1 refers to “pensionable service reckonable by a member of a police force”. He considers it fair to say that Regulation F1 deals with the ‘counting of’ ‘pensionable service’. It does not specify what it is counting towards. The phrase “pensionable service reckonable” leads him to conclude that it is possible to have pensionable service which is not reckonable.
- 13.18 It would be logical to conclude that “pensionable service reckonable” is the same as ‘reckonable service’. He is not, however, suggesting that ‘pensionable service’ and ‘reckonable service’ mean the same thing.
- 13.19 He accepts that periods of unpaid leave when no contributions are paid should not count towards the accrual of pension benefits. Regulation F1, read in isolation, does not, however, expressly state this. Nor does it expressly state that unpaid leave does not count towards the number of years required in order to access a pension.
- 13.20 Part IV of the 1987 Regulations (as amended) deals with ‘pensionable service’. Paragraph (1A) (see sub-paragraph 13.15 above) surely refers to ‘pensionable service’ ‘completed’.
- 13.21 He has also calculated that he is being paid £500 less per year than he should be. He has not been provided with an explanation for how his pension has been calculated. Equiniti appeared to accept that the formula set out in HOC 31/2005 was appropriate. The formula is found in the Part-time Regulations as:

$$\frac{N \times R}{Q}$$

Where: N is the amount which the pension would be if all pensionable service were full-time service; R is the period in years of pensionable service;

and Q is the period in years of pensionable service if periods of part-time service were reckonable as full-time service.

- 13.22 There is no reference to 'reckonable service'. HOC 31/2005 suggests that N = Notional, Q = Qualifying and R = Reckonable. The key components R and Q both refer to 'pensionable service'. This section is open to interpretation.
 - 13.23 He has been given conflicting information about what is meant by 'qualifying service'. The definition in the Scheme Guide is vague and refers to service "for which pension contributions are payable", which is effectively the same as 'reckonable service'.
 - 13.24 He has found it difficult to access the appropriate version of the 1987 Regulations. It is unreasonable to expect a member of a pension scheme to trawl through the internet in search of the terms and conditions which apply to their pension.
 - 13.25 The MPS SOPs and Scheme Guide are the documents which an officer is likely to consult when considering reducing their hours.
14. Extracts from HOCs 33/2003 and 31/2005 are provided in Appendix 3.
15. Having seen MPS' response to his complaint, Mr R made further comments as follows:-
- 15.1 The statement that to receive an ordinary pension a police officer is required to complete 25 years' qualifying (calendar) service is at odds with the statements that were made to him during the internal dispute resolution procedure (**IDRP**). No reference was made to needing qualifying or calendar service; albeit that a document supplied during IDRP suggested that privately the term qualifying service was used.
 - 15.2 He has not found the term(s) 'qualifying (calendar) service' in the 1987 Regulations. He has only found the term 'calendar service' used in HOC 31/2005 and the document's apparent suggestion that 'calendar' and 'qualifying' service are the same thing.
 - 15.3 He is surprised by the suggestion that reducing the number of part-time hours he worked would not have been an option at the time he took unpaid parental leave. Some (not all) of the line managers he had in the Police were sufficiently enlightened to enable him to take time off and reduce his hours and, prior to taking unpaid parental leave, he had worked less hours.
 - 15.4 The suggestion that pensionable service and reckonable service are interchangeable is not supported by the 1987 Regulations, which only refers to pensionable service.

- 15.5 The MPS' 'Special Leave SOP' explanation of the effects of taking unpaid leave only covers unpaid parental leave, as opposed to unpaid leave in general. The comments regarding buying back unpaid parental leave are not particularly relevant to his complaint.

MPS' position

16. MPS submits:-

- 16.1 It has not misinterpreted the 1987 Regulations.
- 16.2 As Mr R did not buy back the four periods of his unpaid parental leave they do not count as reckonable. If, as Mr R implies, he had instead successfully applied to reduce his working hours to a very low number (albeit such an application would not have been in the best interests of the service) during these periods the 1987 Regulations would allow the calendar periods to have counted towards the 25 years' calendar service required to claim an ordinary pension.
- 16.3 Mr R's career break does not count as reckonable.
- 16.4 It acknowledges that in some texts, such as HOC 33/2003, reference has been made to different types of service. While these sources are trying to be helpful, sometimes they can be open to question. Without doubt pensions vocabulary can be complex and sometimes words are interchanged. Nevertheless, the 1987 Regulations govern the calculation methods and set out how pensionable service and pay should be applied.
- 16.5 Qualifying service is defined in the latest 1987 pension scheme guide as:
"Service (or employment) which qualifies an individual to receive a pension. In the police schemes, qualifying service is generally calendar length of service in the police for which pension contributions are payable, plus any service arising from previous service or employment that has been transferred in."
- 16.6 'Reckonable' and 'pensionable' service mean the same thing. That is, pensionable service for most officers will be the length of service in the police for which they have paid pension contribution, with appropriate adjustments for part-time service. Approved part-time working is counted as pensionable service on a pro-rata basis based on actual hours worked as a proportion of full-time work.
- 16.7 As a result of potential claims for discrimination on behalf of part-time officers the 1987 Regulations were changed in 2005, so that officers with part-time service could retire with an ordinary pension after completing 25 years' calendar service (albeit with a lower lump sum potentially restricted to 2 ¼ times their pension) or 30 years' calendar service (with a substantially

greater lump sum based on giving up $\frac{1}{4}$ of their pension).

16.8 Adequate information was available to Mr R about unpaid leave when he was in service. The MPS 'Special Leave Standard Operating Procedure (SOP)' advised that unpaid parental leave did not automatically count as pensionable service. However, officers may have an option to buy back unpaid service on return to the MPS and enquiries should be made to CGI Pensions. The Police Pensions Helpdesk was also available to Mr R.

16.9 It does:

"... however agree that certain words have been used inconsistently in correspondence provided by the MPS or [Equinity Paymaster] and in certain documentation provided by the Home Office. In defence, however certain words have been used to clarify specific aspects of the scheme and have been required to change when the Regulations have been updated."

Adjudicator's Opinion

17. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by MPS. The Adjudicator's findings are summarised below:-

Interpretation of the 1987 Regulations

17.1 The fundamental principle of common law construction was that it was an objective exercise. The court was concerned with the meaning that a reasonable person drafting the document would have intended by the words used. The words used in legal documents should be given their "natural and ordinary" meaning. But the court would not bind itself to the literal meaning of the words used where to do so would reach a conclusion that it was clear was not intended or resulted in an absurd outcome. The usual position was that, if there was a conflict between the terms of a trust deed and rules and the terms of any representations made to the member, the terms of the trust deed and rules would normally prevail. The same approach could be applied to statutory schemes' documents.

17.2 At various points, the 1987 Regulations used the words 'reckon' 'reckoning', 'reckoned' and 'reckonable'. Within the pensions world "**reckonable service**" was understood to mean the service which was used to calculate pension benefits. However, within the 1987 Regulations, the words 'reckon' 'reckoning', 'reckoned' and 'reckonable' were intended to be given their ordinary everyday meaning. In other words, reckonable service was intended to be read as service which counted for benefit purposes. Thus, 'count',

‘counting’, ‘counted’ and ‘countable’ could alternatively have been used to achieve the same meaning as intended.

- 17.3 The 1987 Regulations stated that ‘pensionable service’ was defined as having the meaning given by section 124(1) of The Pensions Act 1995⁴. Section 124(1) of The Pensions Act 1995 said:

“‘pensionable service’, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme.”

So, under the 1987 Regulations, pensionable service meant qualifying service.

- 17.4 Regulation B1 covered the qualification for an ordinary pension, a minimum of 25 years’ pensionable service.

- 17.5 In 2005, the 1987 Regulations were changed so that part-time officers could retire on completing 25 years’ pensionable (qualifying) service. Before the change part-time working counted as pensionable service based on determined hours worked, without any reference to the calendar years served.

- 17.6 Mr R retired with 25 years’ pensionable service. This comprised full-time service plus part-time service ‘reckoned’ (that was, counted) as full-time service.

- 17.7 Schedule B covered the calculation of an officer’s pension. As some of Mr R’s pensionable service was “reckonable” (that was, countable) as part-time and was less than 30 years if it had counted as full-time service, the formula in paragraph 3(2) applied to the calculation of his pension. Namely, $(N \times R)/Q$, where:

‘N’ was the amount that a pension would be if all pensionable service was full-time;

‘Q’ was the pensionable service in years if all periods of part-time service were reckonable (that was, countable) as if they were periods of full-time service; and

‘R’ was the period in years of pensionable service.

- 17.8 A literal interpretation of what it said ‘Q’ and ‘R’ equalled would result in a part-time officer receiving the same pension as a full-time officer as the period in years of pensionable service for ‘Q’ and ‘R’ would be the same, in Mr R’s

⁴ It is now acknowledged that this definition applies in Scotland only.

case 'Q' and 'R' would each equal 25 years. Clearly that was an absurd result and was unlikely to be what was intended.

- 17.9 The purpose of the ratio was to lower the proportion from a full-time officer's pension in relation to part-time hours to full-time hours. To achieve the outcome that a part-time officer should receive a proportion of the full-time equivalent pension, the period in years of pensionable service for 'R' must be less than 'Q'. This meant that the meaning of pensionable service for 'R' could not be the same as defined as pensionable service in years for 'Q'. For 'R' the period in years of pensionable service was actual service built up based on part-time working. A period of part-time service was converted to actual service by multiplying its calendar length by the ratio of part-time hours worked over full-time hours. For example, from 2 February 2004 to 23 May 2004 Mr R worked part-time (16 hours, compared to 40 hours for a full-time officer) for 112 calendar length days. That was equivalent to 45 full days, $(112 \times 16)/40$. Using this basis Mr R's total actual service was 19 years 238 days.
- 17.10 Mr R took a one-year unpaid career break during 1998/99 and four periods of unpaid parental leave during 2007/08.
- 17.11 Regulation F1, paragraph (1), specified the different forms of unpaid leave that were not reckonable (that was countable) as pensionable service. Mr R's unpaid parental leave was covered under sub paragraph (da) and his career break fell under sub paragraph (e) as, "any other period of unpaid leave falling on or after 27th February 1986".
- 17.12 While paragraphs (1B) and (1D) specified an option to buy back pensionable service in respect of unpaid parental leave, there was none for an unpaid career break.
- 17.13 Therefore, MPS had not misinterpreted the 1987 Regulations and Mr R's pension had been correctly calculated.
- 17.14 Mr R asked if HOCs '033/2003' and '31/2005' were relevant. HOCs were issued to the police authorities; generally, not to individuals. MPS might seek to rely on them in support of its interpretation of the 1987 Regulations, but they could not override the 1987 Regulations.
- 17.15 HOC '033/2003' advised on the new provisions for maternity leave, the position on adoption leave, maternity support leave and adoption support leave, buyback of career breaks and ex-gratia compensation on late paid lump sums. The circular referred to "reckonable" and "reckonable service" and "pensionable service". In the context used "reckonable" and "reckonable service" was actual service that counted for the calculation of pension benefits while "pensionable service" was "qualifying service"; which qualified an employee for a pension under the Scheme.

- 17.16 HOC '31/2005' concerned The Police Pensions (Part-Time Service) Regulations 2005. It explained changes to the 1987 Regulations which meant, as a general principle, that the benefits of a part-time officer should be calculated as if the officer had been wholly full-time and then pro-rated for periods of part-time service. The pro-rating factor was equal to the sum of periods of reckonable service, divided by notional full-time service (assuming that the officer had served full-time throughout). The HOC referred to "calendar years served", "calendar years' service" and "qualifying service" in the same context as "pensionable service" and "reckonable service" in the same context as used in HOC '033/2003'. The pension formula noted:

Notional full-time pension x Reckonable service
Notional full-time service

was equivalent to the Regulations' formula $(N \times R) / Q$.

- 17.17 The HOCs did not conflict with the 1987 Regulations.

Information available to Mr R

- 17.18 The remit of this investigation did not extend beyond Mr R's personal circumstances regarding this matter. The wider issues that Mr R had raised pertaining to the information available on unpaid leave to officers in general and whether officers had adequate access to the Regulations fell outside of this. The Adjudicator therefore put these to one side.
- 17.19 Mr R said he had not been directed to any document that said unpaid leave etc affected the service required to retire in addition to the benefits received.
- 17.20 Regulation F1, paragraph (1), specified the different forms of unpaid leave that were not reckonable as pensionable service. Mr R's unpaid parental leave was covered under sub paragraph (da) and his career break fell under sub paragraph (e). While paragraphs (1B) and (1D) specified an option to buy back pensionable service in respect of unpaid parental leave, there was none for an unpaid career break.
- 17.21 As Mr R's career break was not countable as pensionable service and he did not buy back pensionable service in respect of his unpaid parental leave, it followed for both types of leave that no actual service built up for the purposes of the calculation of his pension benefits. Part-time working affected pension benefits because the service used to calculate the benefits was reduced in the Scheme as the pension contributions paid were less than for full-time working.
- 17.22 The Special Leave SOP available when Mr R was in service advised that:-
- Unpaid parental leave did not automatically count as pensionable service.

- Officers might have the option to buy back the unpaid service on return to MPS.
- Enquires should be made to CGI Pensions.

That was sufficient information to make Mr R aware that his pension in the Scheme was likely to be affected by taking unpaid parental leave.

- 17.23 Mr R could also have contacted the Police Pensions Helpdesk if he was unsure or required further information. Mr R had submitted no evidence that he did that at the time. This suggested that, when taking the leave, the possible impact of unpaid leave on his retirement in the future was not in Mr R's mind.
- 17.24 While Mr R was working part-time and had reduced his hours of part-time work. He had submitted no evidence that he was alternatively exploring whether a further reduction in his hours was possible. It was also not possible to say with certainty that a request to reduce his hours further would have been agreed.
18. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his extensive further comments, which are summarised below. I have considered Mr R's comments, together with the other evidence submitted, but I find that they do not change the outcome. I agree with the Adjudicator's Opinion.

Mr R's further comments

19. Mr R says:-

Interpretation of the 1987 Regulations

- 19.1 The term 'pensionable (qualifying) service' does not appear in the 1987 Regulations or any other document.
- 19.2 He agrees with the Adjudicator's interpretation of the word "reckonable".
- 19.3 He did not say that the term "qualifying (calendar) service" was used in the HOCs.
- 19.4 The terms "benefit purposes" and "pension purposes" are vague and open to interpretation. He accepts that the words "reckon" and "reckoning" should bear their ordinary, everyday meanings.
- 19.5 The Adjudicator stated that: "under the 1987 Regulations, pensionable service means qualifying service". HOC 33/2003 stated that career breaks are considered to be qualifying service. Therefore, he does not disagree with

the Adjudicator on this point. It does, however, mean that he was made to work for one year and four months longer than he needed to have done. He achieved the service required to retire with an ordinary pension in September 2015; not January 2017.

- 19.6 He does not dispute that Regulation B1 requires an officer to have a minimum of 25 years' pensionable service in order to be entitled to an ordinary pension. Following the Adjudicator's earlier discussion, this should be read as qualifying service.
- 19.7 If the 1987 Regulations were changed in 2005, so that part-time officers could access an ordinary pension after 25 years' "pensionable (qualifying) service", it must have meant something else before. Therefore, "pensionable/qualifying" and/or "pensionable = qualifying" is not the same as "pensionable (qualifying) service".
- 19.8 The wording of the 1987 Regulations should be interpreted by reference to HOC 31/2005, which provides a perfectly logical explanation.
- 19.9 Regulation F1 does not contain the phrase "not reckonable as pensionable service"; it uses the phrase "pensionable service reckonable". The Adjudicator's precis of Regulation F1 is misleading.
- 19.10 He does not disagree that, under Regulation F1, it is possible to buy back pensionable service for unpaid parental leave, but not for a career break. This mirrors what is said in HOC 33/2003. This HOC stated that it is not possible to buy back the shortfall in pension benefits for a career break. There is no suggestion that it would be possible to buy back service which qualifies/entitles an officer to a pension if the Home Office had approved such an option. There was no need for this when the HOC clearly stated that career breaks are qualifying service.
- 19.11 The HOCs were openly published by the Home Office and do not contain any suggestion that they are intended only for police authorities. He has done nothing inappropriate in reading the HOCs.
- 19.12 Police authorities were instructed to act on the HOCs. They did not have the option to rely on them or disregard them as they saw fit.
- 19.13 He does not dispute that the HOCs cannot override the 1987 Regulations. However, he would argue that it is more accurate to say that they cannot override something expressly written in the Regulations.
- 19.14 A key piece of evidence is the fact that HOC 33/2003 expressly states that career breaks are qualifying service.

- 19.15 There are other pieces of relevant evidence which have not been considered:
- The Career Break SOP; and
 - MPS' Work/Life Balance policy.
- 19.16 He accepts that the SOP is not part of the 1987 Regulations, but it is not possible to work out what is being bought back; the benefits or the service which qualifies/entitles the officer to receive a pension or both. If it was possible to say what was being bought back, it would be fair to suggest that it would be obvious that taking unpaid leave could result in these things being lost.

Information available to Mr R

- 19.17 He has been given conflicting information by MPS and Equiniti. The terms 'qualifying service', 'calendar service', 'reckonable service' and 'qualifying (calendar) service' have been used inconsistently. This led to confusion.
- 19.18 The SOP stated: "unpaid parental leave does not automatically count as pensionable service" and "officers only may have an option to buy back this period of unpaid service". This wording is vague and requires an assumption that the "unpaid service" is the "pensionable service" referred to earlier.
- 19.19 MPS has accepted that key terms were used inconsistently. Since the HOCs do not use key terms inconsistently, MPS must be referring to other documents, such as the Scheme Guide. MPS must, therefore, accept that the documents that he relied upon in making his decisions use key terms inconsistently.
- 19.20 At the time of his decision to take a career break and/or unpaid leave, he did not have access to the online version of the 1987 Regulations.
- 19.21 The SOP was not available to him at the time of his decision(s) to take unpaid leave. The version relied upon by MPS is dated 2015.
- 19.22 It is not true to say that the impact of unpaid leave on his retirement in the future was not in his mind. He can provide details of the financial arrangements he put in place in 2006/07 to offset the loss of benefits resulting from taking unpaid leave and part-time working.
- 19.23 If he had never worked part-time, it might be a valid observation to suggest that he might not have considered part-time work as an alternative to unpaid leave.
- 19.24 With regard to the likelihood that he would have been allowed to reduce his hours, he had been allowed to work the equivalent of 24 and 16 hours per week. For two months in 2007, he worked the equivalent to 14 hours per week. From 2000 until his retirement in 2017, he was working an average of

28 hours per week. Compressed hours is an option which allows officers to take time off during school holidays. On balance, it is more likely than not that he would have been allowed to alter his hours temporarily.

Ombudsman's decision

20. There are essentially two elements to Mr R's complaint:-

- The interpretation of the 1987 Regulations; and
- The information which was available to Mr R when he made his decisions to take unpaid leave.

21. I will start with the first element because this affects any assessment of the veracity and adequacy of the information available to Mr R.

Interpretation of the 1987 Regulations

22. Mr R has clearly put a great deal of time and effort into researching the interpretation of the 1987 Regulations. He has referred me to a number of external documents, which he considers should assist in the interpretation. However, the starting point must be with the 1987 Regulations themselves and any additional legislation specific to the Scheme. It is only if it is not possible to arrive at an acceptable interpretation by reference to the wording of the 1987 Regulations that it would be necessary to look to the wider information matrix in which they sit.

23. The main issue raised by Mr R is the meaning which should be given to the term "pensionable service" in Regulation B1(1). For ease of reference, I will quote Regulation B1(1):

"(1) ... this Regulation shall apply to a regular policeman who retires ... when entitled to reckon at least 25 years' pensionable service ..."

24. I agree that "pensionable service" is not defined in the 1987 Regulations.

25. I also agree that the reference to Section 124(1) of The Pensions Act 2005 does not appear in the 1987 Regulations as they apply in England and Wales. The definition of "pensionable service" is inserted in relation to Scotland only. I note, however, that the Public Service Pensions Act 2013 defines "pensionable service" as: "service which qualifies a person to a pension or other benefits under that scheme".

26. It may be helpful, at this point, to consider the purpose of 'service' in an occupational pension scheme such as the Scheme; that is, a final-salary arrangement. Mr R's retirement benefits are calculated by reference to his service and his salary. However, as is common with most final-salary arrangements, 'service' can serve more than one purpose. This is the reason for the proliferation of terms used in Mr R's case: 'pensionable service'; 'qualifying service'; 'reckonable service'; and 'calendar service'.

27. Briefly, the meaning usually given to each of these terms within the pensions environment is:-

- Pensionable service – service which is, or can be, subject to the pension Scheme.
- Qualifying service – service which entitles the member to a benefit.
- Reckonable service – service which is used in the calculation of benefits.
- Calendar service – actual length of service in years, months or days.

28. I note that the Adjudicator introduced a further term, “countable service”, in order to try to explain the function of the pensionable service referred to in the 1987 Regulations.

29. Regulation B1(1) refers to a regular policeman who is “entitled to reckon at least 25 years' pensionable service”. It is necessary, therefore, to consider what the 1987 Regulations say about the service which a regular policeman may reckon. This requires me to refer to Regulation F1 (see Appendix 1) which sets out the “Reckoning of pensionable service”. In particular, Regulation F1 states that the following service “shall not be reckonable by a regular policeman”:-

- Any period of unpaid parental leave taken after 1st April 2003 in respect of which the conditions specified in paragraph (1B)⁵ are not satisfied; and
- Any other period of unpaid leave falling on or after 27th February 1986 except such a period taken by a person who ceased to serve as a regular policeman before 1st September 1988.

30. Therefore, Mr R may not reckon his period of unpaid special leave in 1997 or his unpaid parental leave in 2007/08. When calculating whether Mr R has the required 25 years' pensionable service referred to in Regulation B1, no account must be taken of his periods of unpaid leave. On that basis, Mr R did not work for one year and four months more than he needed to.

31. I note Mr R's various references to the HOC and other documentation. However, I do not find it necessary to look outside the 1987 Regulations themselves to determine whether Mr R's period of unpaid leave are reckonable for the purpose of Regulation B1(1). The 1987 Regulations are clear enough in themselves.

32. In 2005 the Regulations were changed so that part-time officers could retire on completing 25 years' pensionable service. Before the change, part-time working

⁵ The conditions referred to are that a sum equal to the sum of the pension contributions which would have been payable for the period has been paid.

counted as pensionable service based on determined hours worked, without any reference to the calendar years served.

33. I would agree that the 1987 Regulations do not read particularly fluently following the 2005 amendment.
34. As the Adjudicator explained, because some of Mr R's service was part-time, the formula in paragraph 3(2) of Schedule B applies to the calculation of his pension. Namely, $(N \times R)/Q$, where:
- 'N' is the amount that a pension would be if all pensionable service was full-time;
 - 'Q' is the pensionable service in years if all periods of part-time service were reckonable as if they were periods of full-time service; and
 - 'R' is the period in years of pensionable service.
35. I agree with the Adjudicator's analysis that 'Q' and 'R' cannot mean the same thing. This would result in a part-time officer receiving the same pension as a full-time officer. And there would be no purpose to the formula.
36. Both N and Q refer to pensionable service calculated as "if" part-time service were full-time service. I have deliberately left the words 'pensionable' and 'reckonable' out of my discussion here because they tend to confuse matters. Put simply, the purpose of the formula in paragraph 3(2) is to provide for a part-time officer to receive retirement benefits in proportion to their part-time service. It does this by calculating the retirement pension as if all service were full-time and applying a ratio of part-time to full-time service.
37. This is what MPS and Equiniti have done in Mr R's case.

Information available to Mr R

38. At the time Mr R applied for unpaid special leave in 1997, he signed a declaration confirming that he was familiar with Special Notice 4/96 Paras. 5.1 to 5.7 inclusive. Paragraph 5.5 stated:
- "During a period of special leave off pay individuals will continue to be regarded as employed by the MPS ...
- Special leave off pay does not qualify as reckonable service for pension ...
39. I find that the statement in paragraph 5.5 was sufficient to alert Mr R to the fact that his unpaid was likely to impact on his retirement benefits. I can accept that paragraph 5.5 did not go into detail as to what the effect would be, but it would have been open to Mr R to seek further information if this was of particular concern.
40. When someone is arguing that the information they were given about their pension scheme and/or retirement benefits was incorrect or inadequate, the question for me

to determine is whether they would have acted differently with different or more information. This is not an easy question to address because it is very difficult to determine what someone might have done if provided with different information at some point in the past. It is important, however, to avoid applying the benefit of hindsight.

41. Given the reasons put forward by Mr R at the time of his 1997 request for unpaid leave, I do not find, on the balance of probability, that he would have acted differently if paragraph 5.5 had contained more explanation about the delay to him reaching the 25 years' pensionable service point. Mr R's priority in 1997 was to further his chances of advancing his career and he saw travel as likely to assist with this. His retirement was some 20 years in the future and likely to have been less of a priority for him at that time.

42. When Mr R requested unpaid parental leave in 2007/08, he confirmed that he had read the Human Resources SOP relating to special leave. This stated:

"Unpaid special leave, unless otherwise stated i.e. for parental leave, does not qualify as reckonable service for pension ... purposes. Unpaid special leave will affect future pension entitlements."

43. The Scheme Guide also provided information about unpaid leave. For ease of reference I will quote the relevant section again here:

"Unpaid absence

Your pensionable service may be affected by any periods of unpaid absence. In general, periods of absence can only count as pensionable service (see section 4.3) if pension contributions are paid in respect of the period of absence. Sick leave on full pay or reduced pay and paid maternity leave, maternity support leave and adoption leave count towards pensionable service if pension contributions are paid for those periods.

Unpaid leave, other than the first 26 weeks of maternity leave, can only count as pensionable service if you pay the pension contributions which would otherwise have been due. You are only able to do this for periods of unpaid maternity or parental leave ... If you wish to pay contributions under these circumstances, you must notify the Police Pension Authority within three months of your return to work, or by the date you leave the service if that is earlier ...

Pension contributions cannot be paid in respect of unpaid career breaks."

44. Section 4.3 described "pensionable service" as "the service that counts in the calculation of your pension".

45. I acknowledge that there appears to be some suggestion in the SOP that parental leave would qualify as reckonable service; whereas the Scheme Guide is clear that periods of unpaid absence can only count as pensionable service if contributions are paid. I would agree with Mr R that there is an element of confusion around the terminology used in the SOP and the Scheme Guide.
46. I find that the Scheme Guide gives the clearest explanation of the situation with regard to unpaid leave. It puts members on notice that any unpaid leave is likely not to count towards the calculation of their pension unless contributions are paid. I acknowledge that it does not specifically refer to the deferral of the immediate pension. However, a members' guide cannot be expected to cover every member's particular circumstances. It was sufficient that it alerted Mr R to the possibility that his unpaid parental leave would affect his pension. If this was of particular concern to him, it was for Mr R to make further enquiries about his own circumstances.
47. I have noted that there is a degree of conflict between the SOP and the Scheme Guide. I take it that the purpose of having the employee confirm they have read the SOP is to ensure that they are aware that unpaid leave will affect their future pension entitlements. The SOP was sufficient for this purpose.
48. The question is whether Mr R would have taken any different action if he had had more information about the deferral of his immediate pension. On the balance of probabilities, I find this to be unlikely.
49. Mr R has argued that, instead of taking unpaid leave, he would have asked to reduce his hours. He puts forward a robust argument in support of this being likely to have been agreed. At the time of his request, Mr R was working part-time on a 28/40 hours basis. In the past, he had worked on a 16/40 and 24/40 hours basis. MPS has suggested that it would not have been in the best interests of the service. This is a fair point and one which would have been considered at the time.
50. Given the reason for Mr R requesting unpaid leave in 2007/08, I find it more likely than not that he would have taken the same action even if he had been provided with additional information about the effect it would have on his eventual retirement date. The overall effect of these periods of unpaid leave was to defer Mr R's retirement by around four months. At the time, Mr R's priority was to provide support for his family. I note that he did not opt to pay additional contributions to cover this unpaid leave when he returned; an option which was clearly explained in the Scheme Guide.
51. In summary, I acknowledge that the information available to Mr R has not always been as clear as it could have been. However, Mr R had sufficient information to alert him that any unpaid leave would or could affect the amount of his pension and the date of his retirement. I do not find that the information provided amounts to maladministration on the part of MPS. In any event, I do not find that Mr R has sustained any injustice because I do not find that he would have taken any different action if he had been provided with more information.
52. I do not uphold Mr R's complaint.

PO-20852

Anthony Arter

Pensions Ombudsman
15 November 2022

Appendix 1

The Police Pension Regulations 1987

53. As relevant regulation A9, 'Reckoning of service for purposes of awards', says:

"(1)..., for the purpose of calculating an award payable to or in respect of a member of a police force by reference to any period in years (including a period of pensionable or other service)—

(a) that period shall be reckoned in completed years and a fraction of a year;

(b) a part of a year shall be taken to be that fraction of a year whereof the denominator is 365 and the numerator is the number of completed days in that part and, accordingly, a part of a year which includes 29th February in a leap-year and comprises 365 days shall be treated as a whole year.

..."

54. As relevant regulation B1, 'Policeman's ordinary pension', says:

"(1) ... this Regulation shall apply to a regular policeman who retires ... when entitled to reckon at least 25 years' pensionable service ..."

55. As relevant regulation F1, 'Reckoning of pensionable service', says:

"(1) The pensionable service reckonable by a member of a police force at any date (in these Regulations referred to as the "relevant date") shall be determined in accordance with the succeeding provisions of these Regulations:

Provided that there shall not be reckonable by a regular policeman—

...

(da) any period of unpaid parental leave taken after 1st April 2003 in respect of which the conditions specified in paragraph (1B) are not satisfied;

...

(e) any other period of unpaid leave falling on or after 27th February 1986 except such a period taken by a person who ceased to serve as a regular policeman before 1st September 1988.

...

(1B) The conditions referred to in sub-paragraphs (c) to (dc) of the proviso to paragraph (1) are that the person concerned—

(a) was serving as a regular policeman immediately before a period of... parental...leave which includes the period of unpaid...parental ... leave in question...;

- (b) in accordance with the provisions of paragraph (1D) pays to the police pension authority a sum equal to the sum of the pension contributions which would have been payable for the period of ...unpaid parental leave in question if that person's notional pensionable pay during that period had been at the same rate as that person's pensionable pay (including any...statutory paternity pay payable under **the Social Security Contributions and Benefits Act 1992**) immediately before the commencement of the period of unpaid parental leave which constituted or included the period in question."

56. As relevant, Schedule B, Part I 'Policeman's Ordinary Pension', says:

" ...

2

- (1) This paragraph applies where all the service by virtue of which the policeman's pensionable service is reckonable was full-time.
- (2) The amount of the annual pension shall be half of the policeman's average pensionable pay with the addition of an amount equal to two sixtieths of that pay, multiplied by the period in years by which his pensionable service exceeds 25 years.

...

3

- (1) This paragraph applies where—
- (a) some or all of the service by virtue of which the policeman's pensionable service is reckonable was part-time, and
- (b) if the part-time service had been full-time service, his pensionable service would not exceed 30 years.

- (2) The amount of the annual pension is given by the formula—

$$\frac{N \times R}{Q}$$

where—

- N is the amount that the pension would be if all the pensionable service 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.

..."

57. As relevant, Schedule J, Part IV (Pensionable Service), paragraph 8 - Part-time service, says:

“(1) This paragraph applies in the case of a regular policeman who has spent one or more periods in part-time service.

(1A) In determining the number of years of pensionable service that the policeman is “entitled to reckon” or to have “completed” for the purposes of the provisions specified in sub-paragraph (1C) (which relate to the service required for entitlements to arise), a period of service by virtue of which his pensionable service is reckonable is reckonable as if it were a period of full-time service.

(1B) But sub-paragraph (1A) does not apply so as to affect any other references to pensionable service in those provisions.

(1C) The provisions referred to in sub-paragraph (1A) are—

... (a) **regulation B1(1)**...entitlement to policeman's ordinary pension),
...”

Appendix 2

Dates	Calendar Years	Service Days	Hrs worked	FT Hrs		Reckonable Years	Service Days
17/9/90 to 14/7/98	7	301	40	40		7	301
17/7/99 to 30/4/00	0	289	40	40		0	289
1/5/00 to 1/2/04	3	277	24	40		2	94
02/2/04 to 23/5/04	0	112	16	40		0	45
24/5/04 to 17/5/07	2	359	28	40		2	33
15/6/07 to 17/7/07	0	33	28	40		0	24
15/8/07 to 12/4/08	0	242	28	40		0	170
11/5/08 to 24/5/08	0	14	28	40		0	10
21/6/08 to 7/1/17	8	201	28	40		5	360
Leap year adjustment		3					
Additional Part-time hours worked converted to days				7			7
Total Actual	25	0				19	238

Appendix 3

HOC (033/2003)

58. The circular advises on the new provisions for maternity leave, the position on adoption leave, maternity support leave and adoption support leave, buyback of career breaks and ex-gratia compensation on late paid lump sums.

59. On the buy-back of career breaks it says:

“At the PNB meeting of 19 October 2000 agreement was reached on the introduction of a career break scheme for the police service (PNB Circular 00/16, HOC 4/2001). At the time the Home Office reserved its position with regard to serving officers being allowed to buy back at employee contribution rate the pension rights lost during time spent on a career break.”

On the buy-back of service it says:

“It remains open for an officer to make good any shortfall in pension benefits caused by a career break by serving on to complete 30 years’ reckonable service. In cases where an officer will be unable to secure maximum pension rights by completing 30 years’ service prior to compulsory retirement, he or she has the ability to purchase added 60ths or make additional voluntary contributions (AVC’s) to make up any shortfall in their service period.”

60. On pensionable status during a career break it says:

“An officer remains a member of the force whilst on a career break and therefore remains part of the Police Pension Scheme...The period spent on career break should therefore be treated as qualifying (but not reckonable) service.”

61. Mr R has highlighted the following sections:

Under ‘Maternity leave and additional maternity leave’

- “Under the Police Pensions Regulations pensionable service is normally reckonable only if contributions are made in respect of it.”
- “There is no right to additional maternity leave counting as reckonable service, although it counts as qualifying service and is therefore not to be regarded as a break in continuity of pensionable service.”
- “...the period between week 26 and 52 can be bought back and made reckonable for pension purposes.”

Under ‘Adoption Leave, Maternity Support Leave and Adoption Support Leave’

- “The Police Pension Regulations will not need to be amended as all paid leave, including statutory pay, is reckonable for pension purposes by virtue of the contributions deducted at the time.”

Under 'Buy-back of service'

- "It remains open to an officer to make good any shortfall in pension benefits caused by a career break by serving on to complete 30 years' reckonable service."

Under 'Pensionable status during career break'

- "The period spent on career break should therefore be treated as qualifying (but not reckonable) service."

HOC 31/2005 – The Police Pensions (Part-Time Service) Regulations 2005

62. The circular explains amendments to the Regulations "to ensure that, as far as possible, officers with part-time service in the police receive a fair proportion of their full-time counterparts' pensions."

63. Mr R has highlighted the following sections:

Under 'Background'

- "...as a general principle...the benefits of an officer with part-time service in the police should be calculated as if they had been wholly full-time and then pro-rated for periods of part-time service. The pro-rating factor would be equal to the sum of periods of reckonable service, divided by total service (on the assumption that the officer had served full-time time throughout)."

Under 'Ordinary and short service pensions (Schedule B, Parts 1 and II)

- "In calculating an ordinary or short service pension the most equitable system is to provide an officer with part-time service with a fair proportion of the pension he or she would have received, had the officer served full-time throughout. This allows part-timers to benefit proportionately from dual accrual."

Under 'Officers with no more than 30 calendar years' service'

- "Notional full-time pension x Reckonable service = pension
Notional full-time service"

Under 'Officers with more than 30 calendar years' service'

- "There is a slight adjustment needed for an officer with part-time service who has accrued more than 30 years' qualifying service."

Under 'Qualifying periods for pension benefits'

- “Regulation 6 of the amendment regulations specifies all the references to pensionable service in the Police Pensions Regulations which should henceforth not be interpreted as reckonable service but as notional full-time service.

...

The amendment regulations change that to enable officers with part-time service to qualify for such benefits by virtue of years of notional full-time service (i.e. calendar years).”