

Ombudsman's Determination

Applicant	Mr Y
Scheme	Police Pension Scheme
Respondents	Devon & Cornwall Police Kier Business Services Limited (Kier) (Current Scheme Administrator) Capita Business Services (Capita) (Former Scheme Administrator)

Outcome

1. Mr Y's complaint is upheld and, to put matters right, Devon & Cornwall Police shall arrange for the overpayment of his pension to be recalculated to take account of the effect of the Limitation Act 1980. In addition, it shall pay Mr Y £2,000 for the severe non-financial injustice.

Complaint summary

2. Mr Y's complaint is about an overpayment, which has arisen as a result of the late implementation of a Pension Sharing Order (**PSO**) by Devon & Cornwall Police.

Background information, including submissions from the parties

Background

3. Mr Y retired in October 2011 and started receiving his pension benefits from the Scheme.
4. In May 2013, Mr Y's divorce was finalised and, on 16 May 2013, a PSO was issued in favour of Mr Y's ex-wife. The PSO entitled Mr Y's ex-wife to a 41.28% share of Mr Y's pension benefits.
5. On 4 June 2013, Mr Y's solicitor sent a copy of the PSO to Capita. The annex to the PSO said that it would take effect from the later of the date on which the Decree Absolute of Divorce was granted or 28 days from the date of the PSO. It allowed four

months from the date the PSO took effect or payment of all outstanding charges requested by the pension scheme, whichever was the later, for it to be implemented.

6. On 6 June 2013, Capita wrote to Mr Y acknowledging receipt of the PSO. Capita requested £480 from Mr Y (his half of the administration fee) in order to implement the PSO. The letter said:

“Please note that we are still awaiting details of [Mrs Y’s] current address. Until this information is received we will NOT be able to implement the [PSO].”

Mrs Y’s address had not been included on the PSO annex. The name and address of her solicitor was provided in the annex.

7. On 22 July 2013, Capita acknowledged receipt of Mr Y’s share of the fees. It said:

“We are still awaiting [Mrs Y’s] ... share of the Pension Sharing charges. Once we are in receipt of the outstanding items we will then be in a position to implement the [PSO].”

8. Mr Y continued to receive his full pension. Mr Y has explained that, when he contacted Capita to ask why this was happening, he was told that his ex-wife still had not paid her half of the administration fee.

9. On 6 October 2014, Mr Y contacted Capita by email, expressing concerns over potential overpayments. He said in the email:

“Since retiring from the police at the end of 2011 I have divorced and re married. At the time of my divorce my ex wife requested a [PSO], this was approved by a judge, however, to date, the order has not been implemented as my ex wife never paid the administrative fee. I made initial enquiries about this with the Devon pensions department prior to Capita taking over and was informed that the order would only be implemented if and when my ex paid her half of the administrative fee (I paid my half at the time) and that the pension sharing would start from the date she paid the fee, not the date when the judge made the order. Could you please clarify that this is still the case”.

10. On 5 November 2014, Mr Y chased Capita for a response. On 28 November 2014, Capita responded and said:

“As discussed over the telephone earlier today, I can confirm that the [PSO] will only be implemented once [Mrs Y] makes her share of the payment”.

11. On 29 December 2017, Mr Y complained to Capita that his pension had been reduced to £858.07 per month (net). He asked for an explanation. On 12 January 2018, Capita replied and said:

“We have recently discovered a [PSO] that was to be implemented on your record on 12 June 2013. As this was the implementation date, your pension should have been reduced by 41.28% at this date. Unfortunately, this was never implemented in 2013 as we never received payment from [Mrs Y]. We have been advised that to

prevent any further overpayments, your pension was to be reduced to the correct amount immediately.”

12. In February 2018, Kier was appointed as the administrator of the Scheme.
13. Mr Y complained to Devon & Cornwall Police, in April 2018, under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
14. On 10 April 2018, Devon & Cornwall Police contacted Mr Y to advise that the PSO should have been implemented on 12 June 2013. Devon and Cornwall Police sent a further response to Mr Y on 12 April 2018. It reiterated that the PSO should have been implemented in 2013 but that there was no blame on Mr Y for that, because Capita should have ensured the pension was paid correctly at the time. It said, once Capita realised the error, it acted to ensure he was receiving the correct amount and the overpayment was not increasing. It said that Kier would look to agree a repayment plan, if necessary, over a longer period than the period over which the overpayment was incurred.
15. Mr Y remained unhappy with the response and asked for a review.
16. On 1 November 2018, XPS Pensions Group (**XPS**) took over Kier and assumed the role of Scheme administrator.
17. On 13 November 2018, Devon & Cornwall Police issued its full response to Mr Y under the IDRP. The main points are summarised as follows:-
 - It apologised for the delay since the error had been discovered and since the IDRP started in April 2018.
 - It said that the administration of the Scheme had changed from Capita to Kier and it had decided to take legal advice.
 - It accepted that the PSO had not been implemented when it should have been. It acknowledged that Capita had informed Mr Y that the PSO would not be implemented until the administration fees had been paid. As a result, the full unreduced pension had been paid to Mr Y.
 - Following a review when the administrator changed from Capita to Kier, it appeared the outstanding fees had been deducted from Mr Y’s ex-wife’s share of the pension credit and Mr Y’s pension was then reduced. Accordingly, with the fees accounted for, the PSO had to be implemented as directed by the Court.
 - It said that Kier was of the view that it would be reasonable for Mr Y to apply to the Court for a variation of the PSO so that the transfer date is specified as the date it was finally implemented. This would result in there being no overpayment being owed. It said it appreciated that Mr Y would need to obtain legal advice of his own and asked him to contact Kier in due course to discuss the matter.

- It said that the IDRPs were now exhausted.

18. XPS has confirmed that the overpayment amounts to £36,297.96 (gross). This accumulated over a period of 48 months; December 2013 to November 2017.

Mr Y's position

19. Mr Y submits:-

- He received written confirmation from Capita, in June 2013, that it had received the PSO. He was asked to pay £480 administration fee. Capita informed him that the PSO would not be implemented until his ex-wife paid her administration fee. He paid his fee immediately.
- He telephoned Capita when he continued to receive his full pension. He was told that it had not received his ex-wife's administration fee and he would continue to receive his full pension. He contacted Capita again in 2014, by telephone and email, and was again told the PSO would not be implemented until his ex-wife paid her administration fee and that the PSO would start from the date of implementation; not the date of the order.
- He only became aware that the PSO had been implemented when he received a pension statement from Capita showing that his pension had been reduced by 41.28%.
- He spent the overpayment on day to day living and starting a new life after his divorce. However, he did not make any future commitments based on the full pension he was receiving as he knew that the PSO would be implemented at some stage.
- He cannot afford to repay the overpayment as his only income is the pension he receives from the Scheme, which is now reduced. He has been told that it is usual practice for an overpayment to be repaid over the same period for which it accrued. This would mean a further reduction to his pension leaving him with around £200 per month to live on.
- He did not get a copy of the PSO. He had no further dealings with his own solicitor after the PSO was sent to Capita.
- The whole situation has caused him huge distress and has had a detrimental effect on his wellbeing, including hospital admission for a health condition. He feels that he is being made a scapegoat for the mismanagement of his pension. He has done everything required of him.

Devon & Cornwall Police's position

20. Devon & Cornwall Police provided a joint response on behalf of itself and XPS.

21. Devon & Cornwall Police submits:-

- It apologises for all the delays experienced by Mr Y. It wishes to acknowledge Mr Y's patience and helpfulness throughout the entire process.
- It relied on the Scheme administrators to act and progress things appropriately and reasonably within the regulations.
- Kier/XPS sought clarification from Capita, but Capita has not provided any rationale for the decisions concerning the PSO administration charges.
- XPS is of the view that Capita was justified in not implementing the PSO. Consequently, Devon & Cornwall Police does not agree that the delayed implementation of the PSO amounts to maladministration. It does acknowledge that other administrators might have been more proactive.
- Mr Y has acted appropriately but he was aware of the PSO while receiving his full unreduced benefits. A potential remedy is for Mr Y to refer the matter back to the Court for a variation or cancellation of the PSO.

22. XPS submits:-

- It acknowledges that Capita informed Mr Y that the PSO would not be implemented until the outstanding PSO administration charges had been paid by his ex-wife.
- In its opinion, Capita was justified in not implementing the PSO until the outstanding PSO administration charges had been paid, but other administrators would have taken remedial steps in those circumstances.
- As the PSO has now been implemented, it has suggested that Mr Y should apply to the Court for a variation or cancellation of the PSO.
- When administration of the Scheme was being transferred, Capita decided to reduce Mr Y's pension and implement the PSO. Mr Y's benefits were reduced from the date of the PSO, resulting in the overpayment.

Kier's position

23. Kier said that it had assumed the role of Scheme administrator after Devon & Cornwall Police had decided to implement the PSO. It said the matter related to Capita and Devon & Cornwall Police.

Capita's position

24. Capita said that it was no longer involved as Scheme administrator and it had nothing to add.

Adjudicator's Opinion

25. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Devon & Cornwall Police. The Adjudicator's findings are summarised below:-

- In the Adjudicator's opinion, the PSO should have been implemented in June 2013. Mr Y's pension in the Scheme should have been subject to a debit of 41.28% from the effective date stipulated by the PSO. Capita and Devon & Cornwall Police had delayed implementing the PSO until December 2017, causing an overpayment of £36,297.96. It remained unclear exactly why the outstanding PSO administration fees remained unpaid, but the delay in pursuing this amounted to maladministration. This was then compounded by inaction until December 2017. What had to be considered was whether Mr Y had a defence against recovery of the overpayment.
- The most common defence against recovery of an overpayment was referred to as "change of position"; that is, the applicant has changed his position such that it would be unjust to require him to repay the overpayment, either in whole or in part. To make out a change of position defence certain conditions had to be satisfied. Broadly, the applicant must, on the balance of probabilities, show that because of the overpayment, which he had received in good faith, he had detrimentally changed his position. The money must have been spent on something the applicant would not otherwise have bought; and the expenditure had to be irreversible. If these elements were satisfied the Ombudsman may direct that some or all of the overpayment may be kept by the applicant.
- There were other defences to the recovery of an overpayment; for example, estoppel and contract. These arose less often in pension cases but would be considered if the circumstances of the case suggested that this was appropriate.
- Mr Y's position was that the overpayment should not be recovered because he had relied in good faith on the incorrect information from Capita relating to the implementation of the PSO.
- The Adjudicator acknowledged that Mr Y had contacted Capita on numerous occasions regarding implementing the PSO. On each occasion, Capita had told him that the PSO would only be implemented when Mrs Y paid her share of the charges. However, while the PSO had to be implemented within four months of it being issued, it had already taken effect from June 2013. Mr Y had said that he did not have a copy of the PSO, but it was reasonable to expect that his solicitor would have explained the mechanics of the PSO to him. The PSO was negotiated between Mr Y and Mrs Y, so he must have known about the details of it, including the reduction of his pension. This was because he knew about the reduction that was to be applied to his pension and that it was to take effect imminently. Mr Y had paid his share of the PSO charges promptly and would

have expected the PSO to be implemented soon afterwards. In the Adjudicator's view, this explained why Mr Y was persistent in his pursuit of Capita.

- So, while acknowledging Capita's error in misleading Mr Y, in accordance with the PSO, Mr Y was not entitled to retain his full pension from June 2013. Mr Y was always aware that his pension would be reduced so he had not lost out financially because he was not entitled to retain his full pension after June 2013. The overpayment was what should have been always paid to Mrs Y.
- Mr Y followed up the implementation of the PSO with Capita on more than one occasion, as he understood that it would affect his pension. So, the Adjudicator was satisfied that there was a clear intention of honesty on his part and this had been acknowledged by Devon & Cornwall Police. Nonetheless, the Adjudicator thought there was an argument to say Mr Y could have done more; for example, getting advice from a solicitor about when the PSO came into force.
- The good faith requirement did not only concern instances where the applicant might have known of the error, but also where they ought to have known of, or could have discovered, the error by making additional enquiries. Therefore, although the Adjudicator had a lot of sympathy for Mr Y and did not doubt his honesty, objectively speaking, it could not be argued that he met the test for good faith for a change of position defence to be available to him.
- In any event, there was also nothing indicating that Mr Y had spent the money on a purchase that he would not otherwise have made, had he been aware of the mistake at the time. Mr Y had spent the overpayment on day to day living, so the Adjudicator was not persuaded that all the elements of the change of position defence would have been satisfied in this case.
- The Adjudicator said he also did not think that Mr Y could rely on the defence of estoppel, because this also required good faith to be made out on the part of the applicant.
- Mr Y appeared to have raised the defence of estoppel by representation. This was an all or nothing defence and argued against the complete recovery of the overpayment. In order to show that the respondent was estopped from recovery, the applicant must evidence that there was an unambiguous representation. In other words, there must be an unambiguous statement from the respondent of the amount of the entitlement. The applicant must also show that they relied on the incorrect information and that to repay the money would be to their detriment. Succeeding with an estoppel argument presented a high burden for the applicant. The Courts have spoken of the most important element as showing that it would be unconscionable (extremely or shockingly unfair) to go back on the statement.

- Mr Y considered that there had been an unequivocal statement from Capita that the PSO would not be implemented until Mrs Y had paid her share of the PSO administration fees. So, he relied on this to his detriment.
- In the Adjudicator's view, the PSO provided an unequivocal representation of Mr Y's entitlement; not the information received from Capita. This was that the PSO took effect 28 days from the date of the PSO and Mr Y's pension would be reduced accordingly. In reliance on this, Mr Y had paid his share of the PSO administration fees and had reasonably expected his pension to be reduced shortly after. In the Adjudicator's view, this would explain why Mr Y chased Capita regarding implementation of the PSO and the resulting reduction of his pension. So, the information Mr Y received from Capita had been contrary to the PSO and it was the Adjudicator's view that this could not represent an unequivocal statement that Mr Y was entitled to his full pension after June 2013. This was why, based on the evidence submitted, Mr Y did not have a successful estoppel by representation defence.
- Moreover, from the information provided, it was not clear that Mr Y had acted to his detriment. He was always due to have his pension reduced in June 2013 in accordance with the PSO. He also did not appear to have made any other material decisions based on the overpayments. Mr Y was expecting to have his pension reduced imminently and the Adjudicator said he could not see how Mr Y would have made any future plans with the expectation that his pension would not be reduced.
- In the Adjudicator's view, Mr Y did have a partial defence under the Limitation Act 1980 (**the Act**), against some of the amount that could be recovered.
- In the most recent case of *Webber v Department for Education* [2016] EWHC 2519 (Ch), the High Court held that the applicable cut-off date for the purposes of the Act 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 (**TPO**) of Teachers' Pensions' response to Mr Webber's complaint. In Mr Y's case, the claim had been made on 15 October 2019, when TPO received Devon & Cornwall Police's response, dated 14 October 2019, to Mr Y's complaint.
- For the purposes of the Act, time started running from the date that the overpayment first occurred in 2013 and subsequently upon each further overpayment occurring (Section 5 of the Act). However, the limitation period could be postponed where there had been fraud, concealment or mistake (Section 32 of the Act).
- In such cases, the limitation period was six years from the date Devon & Cornwall Police discovered the fraud, concealment or mistake or could have done so with reasonable diligence. In Mr Y's case, the error went on for several years.

- However, with reasonable diligence, it should have been identified in 2013 that the PSO took effect from June 2013 because the administrators of the Scheme had all of the information to know that they would inevitably be making an overpayment by continuing to pay the unreduced pension. It followed that it could not be argued that time started to run later because there had been a mistake, given that the administrators should have detected in 2013 that there had been a mistake. It ran from when the administrators could have reasonably discovered it.
- The effect of the Act is that Mr Y had a limitation defence against the recovery of any overpayments made more than six years before the relevant date when the limitation period was to be regarded as having stopped (the cut-off date). In this instance the cut-off date was the 15 October 2019, the date on which TPO received formal confirmation from Devon & Cornwall Police that it was seeking the recovery of overpayments from Mr Y.
- It followed that Mr Y had a limitation defence in respect of any overpayments made prior to 15 October 2013. This meant that Devon & Cornwall Police was unable to recover any overpayment that occurred during the period June 2013 to 14 October 2013, because it had occurred more than six years before the relevant cut-off date. However, any overpayment from 15 October 2013 onwards was recoverable, unless any other defence to recovery applied, because Devon & Cornwall Police had made its claim within the required limitation period.
- The Adjudicator said he did not consider that any other possible defences against repayment were available to Mr Y.
- It was the Adjudicator's opinion that Mr Y's complaint should be partly upheld because Capita and Devon & Cornwall Police had failed to fully discharge their duty to implement the PSO from the effective date in June 2013. Devon & Cornwall Police was responsible for the past actions of the Scheme administrator at the time. It should arrange with the current Scheme administrator to recalculate the amount of the overpayment, taking the application of the Act into account.
- Repaying the overpayment would likely provide a challenge to Mr Y and we would expect Devon & Cornwall Police to be flexible in agreeing a suitable repayment plan. We would usually recommend that any repayment plan was at least as long as the period over which the overpayment accrued. Subject to an assessment of his income and expenditure, Devon & Cornwall Police should bear this in mind. The Adjudicator noted that it had already said it was prepared to consider if an even longer period was required so that Mr Y did not suffer financial hardship.
- Given the prolonged length of time of the overpayment, the honesty displayed by Mr Y in actively chasing the Scheme administrator for implementation, and Mr Y's submission that the overpayment issue had impacted his health and

well-being, it was only reasonable that an amount should also be awarded to recognise the severe non-financial injustice he had suffered. The Adjudicator said he had taken account of the fact that the PSO was implemented without notice to Mr Y and he had only found out when his pension was reduced. In his view, a higher distress and inconvenience award of £2,000, would remedy the non-financial injustice.

- The Adjudicator suggested that Devon & Cornwall Police should pay £2,000 to Mr Y, unless Mr Y agreed for this to be offset against the overpayment.

26. Devon & Cornwall Police indicated its willingness to carry out the Adjudicator's suggested redress. However, Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr Y for completeness.

Mr Y's further submission

27. Mr Y states:-

- He utilised the 'overpayment' because Capita had explicitly stated that no funds would be sought to be recovered. It confirmed that it would not ask for any backdated payment and his pension would only be reduced once the PSO had been implemented. Capita said this could only be done when all the administration relating to the PSO had been completed by his ex-wife. He had these conversations with Capita on a number of occasions from 2013 to November 2014; when Capita confirmed the position in an email.
- He has always understood that his ex-wife was entitled to 41.28% of his pension and that this would be paid by virtue of the Court Order. At no point did he expect not to have his pension reduced; it was only a matter of when.
- His mistake was in trusting that Devon & Cornwall Police had placed his pension with a company which had the experience and expertise to manage it professionally and give him reliable and accurate advice.
- In his telephone conversation with Capita, on 28 November 2014, he was told that his pension would be reduced from the date of implementation; not the date of the Court Order.
- He was not aware that Capita was not able to change the entitlement date and that recovery from him would be possible. It is his position that the repayment should be made by Capita because it showed neglect, incompetence and maladministration in dealing with his pension.
- As the onus lay with his ex-wife and her solicitor to complete the administration and pay the outstanding fee, surely some of the consequence should sit there.

- If the overpayment is recovered, even over the same length of time as it accumulated, it will place him in “pension poverty”.

Ombudsman’s decision

28. Under Section 28 of the Welfare Reform and Pensions Act 1999 (**WRPA99**), Mr Y’s pension became subject to a debit equivalent to his ex-wife’s share “on the taking effect of” the PSO. This meant that Mr Y’s pension should have been reduced with effect from the date on which the Decree Absolute was granted or 28 days from the date of the PSO; whichever was the later. The date on which a PSO takes effect is not necessarily the same date as its implementation and it is not uncommon for there to be a delay between the effective date of a PSO and its implementation.
29. Once a PSO is effective, the trustees or managers of the relevant scheme will have a four-month “implementation period” within which to discharge their liability for the pension credit created under the PSO. In other words, Devon & Cornwall Police would have four months in which to reduce Mr Y’s pension and transfer the credit to his ex-wife. However, the four-month implementation period only starts to run from the effective date of the PSO or the date on which Devon & Cornwall Police is in receipt of all the relevant documentation; whichever is the later.
30. The implementation period may also be postponed, under Regulation 7 of The Pensions on Divorce etc (Charging) Regulations 2000 (SI2000/1049) (as amended) (the **Charging Regulations**), where there is an outstanding charge. This is what happened in Mr Y’s case, because his ex-wife failed to pay her share of the administration fee. The initial decision not to implement Mr Y’s PSO until the administration fee had been paid was, therefore, provided for in the legislation.
31. However, Regulation 9 of the Charging Regulations provides for various other methods by which the person responsible for the pension scheme may recover charges. These include making a deduction from the pension credit. This appears to be what Capita eventually did in Mr Y’s case. There was no reason why this could not have been done at a much earlier date and the failure to do so amounts to maladministration.
32. For the sake of clarity, I will just say that “the person responsible for the pension scheme” is defined under the WRPA99 as the trustees or managers of an occupational pension scheme. The Police Pension Scheme does not have trustees. It is governed by regulations made by the Secretary of State by way of statutory instrument. Decisions under the relevant regulations are made by the appropriate police authority. In Mr Y’s case, this is Devon & Cornwall Police.
33. While I can see why Mr Y feels Capita should be held to account for the way in which his PSO was administered, I agree with my Adjudicator that the “the person responsible for the pension scheme” is Devon & Cornwall Police. It was ultimately responsible for implementing Mr Y’s PSO. Its willingness to accept this responsibility and its cooperation with the investigation of Mr Y’s complaint are noted.

34. I also understand Mr Y's comments concerning his ex-wife and her solicitor. However, neither Mr Y's ex-wife nor her solicitor come within my jurisdiction.
35. As a consequence of the failure to implement the PSO at an earlier date, Mr Y has been paid more pension than he was entitled to receive. The overpayment of his pension amounts to £36,297.96, which is a considerable sum.
36. Devon & Cornwall Police is entitled to seek recovery of the overpayment. However, there are potential defences to recovery which Mr Y may be able to rely on. These were discussed by my Adjudicator in his Opinion.
37. I agree that Mr Y has not made out a change of position defence. He was fully aware that his pension was to be reduced as a consequence of the PSO. I accept that he did not know exactly when the PSO would be implemented, but he was on notice that it would be. Mr Y has suggested that he was told that there would be no backdating involved, but there is no evidence of this.
38. The correspondence Mr Y received from Capita only referred to the "implementation" of the PSO being delayed; not the effect. I note that Mr Y sought clarification of this in his email to Capita on 6 October 2014. In its response, Capita referred to a telephone call and reiterated that the PSO would only be "implemented" once Mr Y's ex-wife had paid her share of the administration fee. Mr Y says he was told, in the telephone conversation, that his pension would be reduced from the date the PSO was implemented; not the date of the Court Order. However, Capita only referred to implementation in its follow-up email. It did not say anything about the effect of the PSO not being backdated, which it might have been expected to do if that is what Capita thought was the position and had confirmed this to Mr Y. This is, after all, a significant point. If Capita had considered it necessary to confirm the position concerning implementation in writing to Mr Y, I would have expected it to confirm its view that the reduction would not be backdated at the same time.
39. I note also that the Police Pension Scheme Members' Guide states that, if the Court issues a PSO, a percentage of the member's pension will be allocated to the ex-spouse "at the effective date of the order".
40. I acknowledge that Mr Y took steps to clarify the situation, but I find that the circumstances were such that it was not reasonable for Mr Y to proceed on the basis that he was entitled to his full pension until such time as his ex-wife paid the outstanding fee. Mr Y, himself, appears to have had doubts as to the position because he contacted Capita on more than one occasion seeking a resolution to the situation.
41. It is for this reason that Mr Y has also not been able to make out an estoppel defence. In addition, he has not been able to show that there was an unambiguous representation made to him that he continued to be entitled to the full pension until the outstanding fee was paid.

42. Even without a change of position or estoppel defence, Devon & Cornwall Police does not have a completely free hand to seek to recover the overpayment. As discussed by my Adjudicator, where a party is seeking repayment of a sum paid in error, the Limitation Act 1980 may prevent full recovery. In essence, Devon & Cornwall Police is seeking to remedy an 'unjust enrichment' on Mr Y's part by bringing a claim in restitution to recover monies paid by mistake. It is doing so by asking Mr Y to reimburse the Scheme. Claims in restitution are historically based on forms of action found in contract and so Section 5 of the Act is applicable. Under Section 5, the starting point will be that Devon & Cornwall Police has six years from the date of each overpayment to bring its claim. In certain circumstances, Section 32 of the Act allows the six years to run from the date on which the mistake was discovered, or should have been discovered with reasonable diligence where this is later.
43. I agree with my Adjudicator that, with reasonable diligence, Devon & Cornwall Police, or Capita acting on its behalf, could have discovered the "mistake" in 2013. It would, or should, have known that an overpayment was accumulating from the effective date of the PSO. There are no grounds for starting the six year period from any later date.
44. Mr Y has a defence against the recovery of any overpayments made more than six years before the relevant date on which the limitation period may be regarded as having stopped. In Mr Y's case, this is 15 October 2019, the date on which TPO received Devon & Cornwall Police's response to Mr Y's complaint. Devon & Cornwall Police may not recover any overpayments made before 15 October 2013.
45. It remains for me to consider what, if any, injustice Mr Y sustained as a consequence of the maladministration of his PSO.
46. Mr Y has not sustained any financial loss as a consequence of the maladministration of his PSO. He has, in fact, received more pension than he was strictly entitled to over the period 2013 to 2017.
47. However, I find that the mishandling of Mr Y's PSO will have caused him severe non-financial injustice; commonly referred to as distress and inconvenience. It is right that this should be recognised by an award for non-financial injustice.
48. I uphold Mr Y's complaint against Devon & Cornwall Police.

Directions

49. Within 28 days of the date of this Determination, Devon & Cornwall Police shall arrange for XPS to recalculate the amount of the overpayment. It shall notify Mr Y of the revised amount and agree an appropriate repayment plan with him. It has been noted that, as a rule of thumb, I would expect any recovery to take place over no shorter period than that over which the overpayment accumulated. In addition to this, I would not expect any repayment plan to place the member in financial difficulties. Mr Y has indicated that recovery over 48 months would place him in considerable

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financial difficulty. Devon & Cornwall Police shall take this into account and allow Mr Y to submit details of his income and expenditure in order to arrive at an appropriate recovery plan for him.

50. Within 14 days of the date of this Determination, Devon & Cornwall Police shall pay Mr Y £2,000 for severe distress and inconvenience. If Mr Y prefers, he can opt to have this amount offset against the amount of the overpayment.

Anthony Arter
Pensions Ombudsman

30 June 2020