

Ombudsman's Determination

Applicant	Mr S
Scheme	Police Pension Scheme (PPS)
Respondents	Merseyside Police

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Merseyside Police.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S has complained that Merseyside Police has failed to put in place provisions to lift the commutation cap that affects officers that have less than 30 years pensionable service.

Background information, including submissions from the parties

4. Mr S is a member of the PPS and has over 25 years of pensionable service. The PPS provides a pension of two thirds of final pensionable salary on completing 30 years of service. Officers who have completed 30 years of pensionable service may also commute 25% of the pension to be commuted for a lump sum.
5. Officers retiring before completion of 30 years' service receive a pension based on their actual years of service and the maximum amount that may be commuted is 2.25 times the annual pension. Mr S says the difference in the way the maximum lump sum commutation is calculated for those with less than 30 years' service is significant and he estimates the difference to be approximately £150,000 in his own case. Mr S also says the restriction is the result of a pre-A day (6 April 2006) HMRC requirement that is no longer necessary. Each pension scheme can decide whether to maintain the restriction.
6. There has been lobbying for the commutation cap to be lifted for those officers with less than 30 years' service. A letter sent to the Chair of the UK Pensions and Consultative Forum and Scheme Advisory Board on 30 June 2016 by the Home Office confirmed that Ministers had agreed to change the restriction currently in the

regulations for officers with between 25 and 30 years' service to allow them to commute up to 25% of their total pension benefits. However, a stipulation was added that the difference between the full 25% of pension commutation amount and the previous capped amount would have to be funded locally from the police budget.

7. At the UK Police Pension Forum and Scheme Advisory Board, the employer and staff associations argued that the new funding criteria meant that the employer was paying twice. Also, the Government Actuary's Department confirmed that commutation is immaterial for scheme valuation purposes as it is actuarially neutral.
8. The change to the regulations has not been progressed and this was confirmed in a letter sent by the Home Office to Mr S in early 2018 which said:

"As you may be aware, the Home Office consulted members of the Police Pensions Scheme Advisory Board (SAB) on regulations which would remove the maximum commutation payments. The consultation responses highlighted a difference of opinion between police employers and staff associations over the funding of the provision, as you highlight in your letter, and whether forces would allow officers to use it. As a result of the consultation process, the Minister for Policing and the Fire Service has decided not to proceed laying these regulations at this time.

The Minister will reconsider laying the regulations if there is evidence from members of the SAB that their position on the issue has changed."

9. Mr S raised a complaint with Merseyside Police over its decision not to remove the commutation cap. Merseyside Police rejected Mr S' complaint saying that it was not possible to remove the commutation cap as there were no statutory instruments in force to support this or to formulate a discretionary policy to support the change.

Adjudicator's Opinion

10. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Merseyside Police. The Adjudicator's findings are summarised below.
11. Although the Adjudicator could understand Mr S' dismay that the commutation cap is still in force he did not consider that this was a matter that could be resolved through this office.
12. The Pensions Ombudsman's role is to investigate complaints which can either be matters of injustice due to maladministration or disputes of fact or law. If it is found that there has been injustice then the Ombudsman can direct a scheme to put the complainant back in the position he or she would have been if the injustice had not occurred.
13. But in this instance, the Adjudicator did not consider that any injustice had occurred as the commutation cap is currently a provision of the regulations which govern the

PPS. Although Mr S may consider the current commutation cap to be unfair and there is some support for this view, it has not been reflected in the regulations which govern the PPS. Thus, the Pensions Ombudsman would not have grounds to direct the scheme to change its current practice.

14. The Home Office is of the view that there are costs associated with any change to the commutation rates and these should be borne by individual forces. Although this point may be disputed by various consultative bodies the bare fact remains that there has been no change to the regulations and until such time as a change is made the current regulations will apply.
15. A change to the regulations can only be made by the Minister laying an amendment to those regulations in Parliament. At present the Minister is not inclined to make any changes.
16. Finally, the Adjudicator said that the Pensions Ombudsman does not have the authority to direct a Minister or the Home Office to make a change to the regulations as this is outside of his remit.
17. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 key points made by Mr S for completeness.
18. Mr S says that this is a case that the Ombudsman should progress on his behalf. Furthermore, the Adjudicator's Opinion is factually incorrect as at no time has he stated that his complaint was against Merseyside Police, the complaint is against the PPS. The only reason he raised a complaint against Merseyside Police through the IDRP process was because he was required to do so.

Ombudsman's decision

19. Firstly, I would explain that the respondent to the complaint is Merseyside Police as under the PPS regulations it would be responsible for payment of any benefit to Mr S and any complaint about the benefits or calculation of those benefits should be addressed to it. There is no overall PPS body and each police authority is responsible for providing the benefits of the PPS to its employees.
20. Mr S has also said that this is a complaint that I should progress on his behalf. I do not agree, my role is to determine whether a member of a pension scheme has been badly treated either because a respondent has not provided benefits in accordance with the rules of a pension scheme or has made a mistake in the law governing the pension scheme. The role is one where I have to act impartially and weigh up the facts and evidence presented by both parties to the dispute. It is not to act as a champion for the complainant or to lobby for a change to the rules or regulations that govern a scheme.

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21. Although Mr S may consider that the current rates are unfair in respect of officers like him who have between 25 and 30 years of service, a change to the PPS regulations can only be made by Parliament agreeing to a change to the regulations.
22. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
20 February 2019