

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY THE PENSIONS OMBUDSMAN**

<b>Applicant</b>	Ms Joanna Nowacka
<b>Scheme</b>	Principal Civil Service Pension Scheme ( <b>PCSPS</b> )
<b>Respondent</b>	Cabinet Office (on behalf of Xafinity Paymaster)

**Subject**

Ms Nowacka's complaint is that Xafinity Paymaster refunded her PCSPS contributions instead of transferring her entitlement to the New Police Pension Scheme (**NPPS**).

**The Pensions Ombudsman's determination and short reasons**

The complaint should be upheld. Ms Nowacka received confusing correspondence and her home address was not used. In consequence Ms Nowacka missed the opportunity to transfer her entitlement to NPPS.

## DETAILED DETERMINATION

### Material Facts

1. Ms Nowacka was employed as a Police Community Support Officer (**PCSO**) until 30 December 2008. In that role she was a member of the PCSPS from 26 February 2007 until her employment ended. Ms Nowacka's reason for leaving her employment was that she began training as a police officer on 9 February 2009. She then became eligible to join the NPPS.
2. Under the 2002 Section of the rules of the PCSPS, members with less than two years pensionable service were entitled to transfer to another scheme or have a refund of the member's contributions. Transfers between PCSPS and the NPPS are (if made within the relevant time limits) on advantageous Public Sector Transfer Club terms.
3. At the time that Ms Nowacka was a member of the PCSPS Xafinity Paymaster were the scheme administrators. During the investigation of Ms Nowacka's complaint, the Cabinet Office has responded on their behalf. Xafinity Paymaster are also the current administrators of the NPPS. There are different sections of Xafinity Paymaster responsible for each scheme – although this would not have been obvious to Ms Nowacka.
4. On 3 February 2009, the PCSPS section of Xafinity Paymaster sent a leaving letter (the **February 2009 letter**) to Ms Nowacka's home address giving details of the two options available to her (either to transfer her benefits to another pension scheme or receive a refund of her contributions), along with the form she needed to return. They asked her to respond by 2 May 2009. The transfer value was £4,746.68 (on non-Public Sector Transfer Club terms) or the refund value was £757.54.
5. Ms Nowacka does not know if she received this letter, but says she is sure that she completed a form equivalent to the one attached to the February 2009 letter, after she started her police training. Xafinity Paymaster have no record of receiving this form.
6. During her training as a police officer, Ms Nowacka completed and returned Form 8400 ("Transfer of Previous Pensionable Service"). Form 8400 was issued to all recruits moving from PCSO employment and its purpose was to register a general interest in transferring into the NPPS. It asked for authority to request information regarding a possible transfer into the NPPS and stated (in bold):

“If you have not received details within 3 months, you should contact Logica – Pensions [which become Xafinity Paymaster] ... to ensure this form has been received.”

7. The NPPS section of Xafinity Paymaster received this form (although the Cabinet Office has been unable to provide details of when, or a copy of it) and as a result, they sent a letter dated 12 March 2009 (**March 2009 letter**) which said:

“Thank you for completing the form to indicate that you may be interested in transferring your previous service as a PCSO into the New Police Pension Scheme (NPPS).

As you may be aware your employment as a PCSO was covered by the pension arrangements of the Principal Civil Service Pension Scheme.

These state that as you had less than two years service you must be given the choice to receive either a refund of the pension contributions you have paid or to transfer this period of service to the NPPS.

You will be advised of the potential refund payable or transfer value that applied within three months of your last day of service as a PCSO. We will also enclose a form to enable you to indicate how you wish to proceed.

If you decide to take a refund of your contributions, the amount due will be paid to you within one month of receiving your completed application. Alternatively, if you have opted to transfer your entitlement we will provide you with a quotation of the service credit your employment as a PCSO will purchase you in the NPPS.”

8. Ms Nowacka acknowledges that she received this letter.
9. Nothing further happened until 29 June 2010 (the **June 2010 letter**). The PCSPS section of Xafinity Paymaster wrote to Ms Nowacka at Tottenham Police Station, which they state was recorded as her then current work address (Ms Nowacka states that she was based elsewhere at this time).
10. Two reasons have been provided for writing to a work address, rather than Ms Nowacka’s home address. Under the PCSPS Stage 1 internal dispute resolution procedure (**IDRP**) response, Xafinity Paymaster said that, for security reasons, the NPPS system does not keep records of home addresses. However, under the Stage 2 decision, the Cabinet Office stated that the reason was because Ms Nowacka had failed to respond to previous letters sent to her home address.
11. The June 2010 letter stated that Xafinity Paymaster had not received a response as to whether Ms Nowacka wished to transfer her benefits from the PCSPS or receive a refund. It gave her one month to respond to the letter or she would

receive an automatic refund of her contributions. Ms Nowacka says that she did not receive this letter.

12. The PCSPS section at Xafinity Paymaster wrote again to Ms Nowacka on 1 September 2010 (the **September 2010 letter**), this time to her home address. This letter said that they had not received a completed Personal Details Form as to her options regarding her PCSPS benefits and therefore a refund would be made. £762.18 (representing the member's contributions) was paid into her bank account on 7 September. Ms Nowacka says that she did receive this letter, but not until her return from honeymoon on 18 September, after the refund had been paid.

### **Summary of Ms Nowacka's position**

13. Ms Nowacka says that she is entitled to a transfer as she made her intentions known by completing Form 8400. Therefore, Xafinity Paymaster acted against her wishes by refunding her contributions and she should be compensated either by allowing a retrospective transfer or £69,000. The later she calculates as to what she would need to earn over two years to replace the missing pensionable service. She argues that the March 2009 letter does not state that the default position would be she would receive a refund of contributions. She also says that she did not chase this letter as it said that Xafinity Paymaster would contact her.

### **Summary of Xafinity Paymaster/Cabinet Office's position**

14. Neither Xafinity Paymaster nor the Cabinet Office upheld Ms Nowacka's complaint under the IDRP. The Cabinet Office, in particular, argue that Xafinity Paymaster informed Ms Nowacka of her options within two months of her leaving the PCSPS and she ought to have contacted them if she did not receive the information mentioned in the March 2009 letter.
15. In relation to why Xafinity Paymaster wrote to two separate addresses, the Cabinet Office state that Xafinity Paymaster "... went beyond what was required of them to contact her, because they had not had a reply from her from the home address she had given them. They made enquiries with the team within Paymaster administering the Police Pension Scheme (PPS) to find her employer's address."

16. However, the Cabinet Office agree that there was poor administration on Xafinity Paymaster's behalf, in that they did not follow up on either the February or March 2009 letters until June 2010. Xafinity Paymaster also failed to follow up on the one month deadline given in the June 2010 until September. But they say that Ms Nowacka benefited from this, as she had additional time in which to make a decision about her benefits.

## Conclusions

17. I do not think it was unreasonable of Ms Nowacka not to reply to the February 2009 letter, which I consider, on the balance of probabilities, she did receive, because shortly thereafter she completed Form 8400 which she would have expected to set the transfer in motion. If it were necessary to reach a conclusion, I would say that Form 8400 was the only one she completed, and that she has misremembered its content.
18. The March 2009 letter was sent by the NPPS section of Xafinity Paymaster, but it purported to set out the situation in relation to PCSPS as well as NPPS. I can see why that seemed a sensible thing to do: PCSOs doubtless often become police officers. But it resulted in a muddle in this case.
19. It said, in effect, that Ms Nowacka should wait to be told what her benefits were. She would not have known that one section of Xafinity Paymaster did not know that the other section had already set her the relevant letter. Indeed she would not have known that there were two distinct sections at all (particularly since the letter talked about both schemes). She could reasonably have expected that a letter setting out her options would be the next thing she would get and it was reasonable of her to take no action, at least initially.
20. Ms Nowacka did nothing in relation to the transfer for 18 months. She could have chased for the transfer information promised in the March 2009 letter, but I do not think that the onus was on her to do so. She would not have known there was any particular urgency (the three months referred to in the March 2009 letter was not of any particular significance to her). Also, Xafinity Paymaster did nothing for 15 months and it would be harsh indeed to find Ms Nowacka at fault for being passive when Xafinity Paymaster were themselves inactive for almost as long.
21. Xafinity Paymaster should not have written only to Tottenham Police Station in June 2010, when they had her home address. While they have said that, as

administrators of the NPPS, they do not hold details of home addresses, they were contacting Ms Nowacka in relation to her PCSPS benefits and therefore should have written to her home address – which, in that capacity, they held. Had they done so, there would have been an increased likelihood that Ms Nowacka would have received the letter.

22. The Cabinet Office's explanation that the Police Station address was used because Ms Nowacka failed to respond to information sent to her home address is not really supported by the facts. There was only one letter that required a reply to which she had not responded – the February 2009 letter. It was over a year since that was sent and it had never been followed up. And the September 2010 letter was sent to her home address.
23. I find that the primary cause that Ms Nowacka did not transfer was the confusing March 2009 letter which assumed that she had not yet been sent the relevant papers. The secondary cause was that her home address was not used, for no clear reason. I find that without them she would have transferred under Public Sector Transfer Club terms.
24. I have taken into account that the March 2009 letter was from the NPPS section and so could be regarded as relating to the administration of that scheme, in relation to which Ms Nowacka has not made any complaint. But given that it contained information about both schemes, and that those responsible for PCSPS must be taken to have known that such letters were sent, I think it comes within the scope of the complaint as made.

### **Directions**

25. Subject to Ms Nowacka repaying the £762.18 refund, the Cabinet Office are, within 28 days, to take such steps as are necessary for Ms Nowacka to be treated under NPPS as having transferred to it on Public Sector Transfer Club terms and they are to provide her with details of the resulting service credit under NPPS. (In the, I hope highly unlikely, event that there is any remaining dispute as to the NPPS benefits, it can be dealt with as a new complaint.)

**Tony King**  
Pensions Ombudsman

28 November 2014