

Ombudsman's Determination

Applicant	Mr N
Scheme	The Police Pension Scheme (the Scheme)
Respondent	Kent Police Kent County Council (the Council)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Kent Police or the Council.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N argues that his agreement to purchase added years within the Scheme has had no value to him, so he would like a return of his additional contributions.

Background information, including submissions from the parties

4. The Chief Constable of Kent Police is the Scheme Manager, and the Council is the Scheme administrator.
5. In January 1990, Mr N joined the Scheme, governed by the 1987 Police Pensions Regulations (**the Regulations**).
6. Upon joining the Scheme, Mr N transferred in benefits from another pension scheme, which secured him an additional 306 days' service within the Scheme.
7. In 2002, Mr N elected to purchase added years within the Scheme. The method used under the Regulations upon transferred service is to effectively move back the member's start date. This is called 'Previous Service Assessment Date', which became 15 March 1989 for Mr N.
8. In 2002, Mr N was employed in the rank of Sergeant and so his compulsory retirement age (**CRA**) at that time was 55, which he would reach in 2017. His additional contributions for purchasing added years were payable until his 55th birthday.

9. Mr N was only able to achieve 27 years' service before his CRA, so he was eligible to purchase additional 60ths within the Scheme. He would then be entitled to the maximum pension without reduction at his CRA, age 55.
10. Section B7 (4)(b) of the Regulations states:

“in the case of a regular policeman who retires or retired with an ordinary pension when entitled to reckon less than 30 years' pensionable service otherwise than in the circumstances mentioned in sub-paragraph (a) or (c) of Regulation B2(1), the lump sum calculated in accordance with paragraph (7) (disregarding any reduction in accordance with the proviso thereto) does not exceed an amount equal to $2\frac{1}{4}$ times the annual amount of his pension...”
11. This regulation limits the amount of lump sum to 2.25 x pension if the full 30 years' service has not been reckoned.
12. In 2011, Mr N was promoted to the rank of Inspector, where the CRA was 60.
13. Under Part II of the Police Pensions (Purchase of Increased Benefits) Regulations 1987 (**the Increased Benefits Regulations**) it states:

“Election to purchase increased benefits

3. (1) Subject to paragraph (2), an eligible policeman may, for the purpose of reckoning an additional number of sixtieths in calculating the awards payable to, or in respect of him under the principal Regulations, by notice in writing to the police authority in accordance with the following provisions of these Regulations.

(2) A policeman shall not so exercise the right of election accorded by paragraph (1) that the aggregate number of sixtieths reckonable by him exceeds or, if he continued to service until his retirement date, would exceed 40.

(3) When the retirement date of a policeman who has exercised the right of election accorded by paragraph (1) becomes later than it was at the time of his election by reason of his subsequent promotion or the subsequent postponement of that date under Regulation A18(2) of the principal Regulations, then notwithstanding that he may derive no benefit from his election, his liability to make payment in accordance with the following provisions of these Regulations shall not be affected and he shall not be entitled to the repayment of any lump sum or contribution so paid.”
14. Mr N requested a retirement illustration based on a retirement date of 3 June 2018, but was unhappy to learn that he would not be eligible to receive the maximum 25% lump sum.
15. Mr N raised a formal complaint, and as part of the Council's response, it offered to refund additional contributions back to the date on which Mr N was promoted to

Inspector. It confirmed that Mr N would be able to retire on the full lump sum on 15 March 2019, having then achieved 30 years' actual service.

Adjudicator's findings

16. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised below:-
- The Increased Benefits Regulations state that contributions will not be refunded where a member is promoted after an election to purchase added years.
 - The Regulations set out that added years will be purchased with the additional contributions.
 - Mr N has argued that the additional contributions have not been of any benefit to him, however, had he remained a Sergeant, he would have been able to retire with full benefits at age 55 because of the additional contributions.
 - Mr N would not have known in 2002 if and when he would be promoted, so it is likely he would have pursued the added years purchase, as it was a valuable benefit to him to age 55 based on his circumstances at that time.
17. Mr N did not accept the Adjudicator's findings and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's findings and I will therefore only respond to the key points made by Mr N for completeness.

Summary of Mr N's response

18. At the time he made his decision to elect to purchase added years, in 2002, he received no information about what would happen should he be promoted.
19. The Regulations are complex and few people, including representatives of the Council, can understand them.
20. He was not aware of the existence of the Increased Benefits Regulations so could not have requested to see a copy at the time.
21. Even if he had remained a Sergeant, he would not have been able to take the full lump sum at age 55.
22. The Council's decision to refund some of the contributions shows that the Council believes there is an issue with the benefit.
23. Had it been made clear to him that the option was irrevocable even after promotion, he would not have elected to purchase the added years.

Ombudsman's decision

24. Mr N has argued that, had the Council made him aware in 2002 that his additional contributions were irrevocable upon promotion, he would not have proceeded with the purchase of the added years.
25. Following changes to CRAs in 2006, the Scheme issued a 'Home Office Circular'. This stated:

"Pension and Lump Sum After the pre-October 2006 CRA

4.9 Under the pre-October 2006 arrangements, officers with less than 30 years' service who had an extension of their CRA and who then retired before reaching that new retirement date were not entitled to a lump sum based on a quarter of their pension. We have made a further change in that officers who serve beyond the pre-October 2006 CRA for their rank and Force will retain an entitlement while remaining in a rank and Force to which that CRA applies to retire with an immediate pension and/or lump sum based on a quarter of the pension. In this way a pre-October 2006 CRA of below 60 becomes, within the limits of rank and Force, an additional pension age under the Police Pension Scheme 1987 enabling officers to opt to retire voluntarily with an immediate pension and take a lump sum based on a quarter of the pension without having to serve to a further point determined by management"

26. Therefore, had Mr N remained at the rank of Sergeant, he would have been able to retire on full benefits, including a full lump sum, at age 55, regardless of the changes made to CRAs from 2006.
27. Mr N has argued that he would not have elected to purchase the added years in 2002, had he been told that it was irrevocable, but I find this statement is made with the benefit of hindsight. When Mr N made the decision in 2002, he was a Sergeant with a CRA of 55, but unable to achieve 30 years' service. So, at that time and given his individual circumstances, the election to purchase added years was of substantial value to him.
28. I note Mr N's comments that the Increased Benefits Regulations were not easy to locate, I accept that may be true, but this does not mean they are not applicable and enforceable.
29. I further note that Mr N did not seek financial advice before making his decision in 2002. A pensions adviser would have had the knowledge and resources to provide Mr N with the necessary information to allow him to make a fully informed decision. I do not find Kent Police or the Council at fault for Mr N's lack of awareness on the irrevocable nature of the added years purchase.
30. Mr N has suggested that the Council's decision to refund his additional contributions from the time of his promotion is some acceptance of guilt. The Council is not obligated to return any of the additional contributions under the Regulations and the

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Increased Benefits Regulations. Mr N was not entitled to any such refund but the Council can exercise its discretion and has done so. This action does not instigate a right to a full refund of additional contributions.

31. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
30 January 2019