

Ombudsman's Determination

Applicant	Mr T
Scheme	Fee Paid Judicial Pension Scheme (the FPJPS)
Respondents	Ministry of Justice (MoJ) XPS Pensions Consulting Limited (XPS)

Outcome

1. Mr T's complaint against the MoJ is upheld. To put matters right, the MoJ shall increase the redress amount payable to Mr T from £1,500 to £3,000 to reflect the exceptional distress and inconvenience caused by its maladministration.

Complaint summary

2. Mr T has complained that his FPJPS records were inaccurate and there has been significant delay in correcting them.

Background information, including submissions from the parties

3. Mr T is a Fee-Paid Judge, who held three separate roles in Tribunal One, Tribunal Two and Tribunal Three. Mr T was a member of the FPJPS which was a defined benefit arrangement. Mr T's pension benefits were based on the number of days he sat as a Tribunal Judge.
4. On 31 March 2015, the FPJPS closed to further accrual.
5. On 1 April 2015, Mr T became a member of the Judicial Pension Scheme 2015 (**the JPS2015**).
6. On 4 January 2018, Mr T received his statement of accrued benefits (**Benefit Statement**) in the FPJPS as at 1 April 2017 for his roles as a Tribunal One and Tribunal Two Judge. The Benefit Statements included the number of sitting days for the fee periods from 7 April 2000 to 31 March 2015. The enclosed letter said that Mr T should contact the MoJ if he thought that any of the information in the Benefit Statement was incorrect.

7. On 7 January 2018, Mr T sent an email to XPS, the administrator of the FPJPS, and said he had received his Benefit Statement as at 1 April 2017 as a Tribunal Two Judge and some of his sitting days had been omitted. Mr T set out what days were missing and provided evidence of his actual sitting days. This included payslips, excel spreadsheets showing days worked and print outs that had been sent to him by the MoJ finance team to enable him to reconcile each sitting day with the amounts on his payslips. He asked for his Benefit Statement as at 1 April 2017 to be updated and for a revised statement for his records.
8. On 8 January 2018, Mr T sent an email to XPS and said he had not received a Benefit Statement as at 1 April 2017 for his role as a Tribunal Three Judge. He sat in this jurisdiction between 7 July 2014 and 26 October 2017. He had since then confirmed that he would no longer be sitting on this particular Tribunal. Mr T provided similar evidence to that sent on 7 January 2018, showing his actual sitting days, and asked to be provided with a Benefit Statement as at 1 April 2017.
9. On 9 January 2018, Mr T sent an email to XPS and said he had received his Benefit Statement as at 1 April 2017 as a Tribunal One Judge and some of his sitting days had been omitted. Mr T provided similar evidence to that sent on 7 January 2018 and asked to be provided with a revised Benefit Statement as at 1 April 2017. In addition, Mr T said his date of birth was recorded incorrectly as the 25th when it should be the 26th.
10. On 26 January 2018, Mr T's date of birth was amended on his online pension records.
11. On 27 January 2018, Mr T sent a letter to XPS and said he had provided evidence to update his Benefit Statements as at 1 April 2017 and this did not appear to have been completed. It had only changed his date of birth. He had now included all the information he had previously sent by email as hard copies. The letter was sent by recorded delivery.
12. On 15 February 2018, XPS sent an email to Mr T and said it had received his letter of 27 January 2018. It said that Mr T had mentioned that he had provided evidence of errors however it did not appear to be in receipt of this. XPS asked whether he was able to advise what his queries were and to what address these were sent. It did receive his email of 9 January 2018 which advised it of an error in his date of birth which it duly amended.
13. On 15 February 2018, Mr T sent an email to XPS and said that there had been around 300 pages of enclosures comprising spreadsheets and supporting evidence submitted by email and hardcopy. Those attachments were referred to in the letter itself and he had evidence that the whole package was received. He said that many of the enclosures had already been attached to email messages sent on 8 and 9 January 2018.

14. On 4 April 2018, Mr T sent an email to XPS and said he was concerned that he had not received a substantive response to his emails and letters regarding his FPJPS record.
15. On 7 April 2018, XPS sent an email to Mr T and said it could confirm that it did receive his letter and the enclosed evidence, and it had also already received the evidence provided by email. The information had been sent to the MoJ on 11 January 2018. It would contact him once it received a response.
16. On 7 April 2018, Mr T sent an email to XPS and said the hard copies sent in January 2018 included some additional sittings compared to those sent by email in early January 2018 as he had to obtain some additional information from his accountant. He asked that this be brought to the MoJ's attention and for details of the complaint's procedure.
17. On 24 April 2018, XPS sent an email to Mr T and said in summary:-
 - His previous email of the 7 April 2018 had been sent to an email address that was currently not in use, and could he use the main inbox in future which had been cc'd into this email.
 - It thanked him for confirming that the posted evidence included additional information to that of his emails. It had located his mailing and had now referred it to the MoJ once again and this included the additional information that had been provided by post in January.
 - The reason it was taking so long to resolve his issues was due to the high volume of responses regarding sitting days in addition to the normal high levels of workflow that it and the MoJ were currently experiencing. It apologised for the inconvenience.
18. On 11 June 2018, the MoJ sent a letter to Mr T and said in summary:-
 - Its aim was to provide a timely response to his query about the information being used to calculate his benefits in the FPJPS however in this case it had fallen short of this.
 - It apologised for the delays and said that the sourcing and combining of data from multiple systems had been a major and complicated undertaking.
 - While the majority of this work had proceeded effectively and accurately in some instances the data had been incomplete or contained errors.
 - To improve this position, it was investing in new systems and processes that would increase accuracy and reduce the time it took to interrogate historic data where queries did arise. That work coupled with the extra resource it had put into its scheme administration was already paying dividends and the backlog of outstanding queries was falling.

- Nonetheless resolving historic issues was complex and time-consuming work. It could assure him that its team was working hard to resolve his query. In the meantime, it would like to thank him for his continued patience. Where it did find errors all records of pensionable service would be corrected to ensure payments properly matched entitlements under the Regulations.
19. In July 2018, XPS sent Mr T Benefit Statements as at 5 April 2018 for the JPS2015 and for the FPJPS.
20. In August 2019, XPS sent Mr T Benefit Statements as at 5 April 2019 for the JPS2015 and for the FPJPS.
21. On 6 July 2020, Mr T sent an email to the MoJ and said in summary:-
- He contacted XPS in January and February 2018 and provided evidence so that it could update the missing sitting days as part of his pension entitlement.
 - In June 2018 he received a letter from the MoJ confirming that there was a backlog for records to be updated and he should wait for this to be completed.
 - Since then, he had received two sets of Benefit Statements, and he remained concerned that these did not reflect his correct sitting days. He had contacted The Pensions Ombudsman (**TPO**), but it had advised that he needed to complete the FPJPS' Internal Dispute Resolution Procedure (**IDRP**) as he had not had an adequate response since raising his initial concerns.
 - He would like the MoJ to provide the following:-
 - confirmation of his commencement dates for each of his judicial appointments as he thought the dates held were incorrect;
 - confirmation of the breakdown of his sitting days with actual dates, year on year for the JPFPS and JPS2015 for each of his judicial appointments; and
 - the sitting day formulae that had been used to calculate his entitlement.
22. On 7 July 2020, XPS sent Mr T a letter responding to his complaint and said in summary:-
- XPS was not in a position to amend any data that it held as it may only do so after receiving instruction from the MoJ.
 - It had initially referred his query to the MoJ on 11 January 2018 following his email of 9 January 2018.
 - XPS had additionally forwarded hard copies of his evidence to the MoJ on 24 April 2018.
 - It had advised the MoJ that he had made a formal complaint and in addition it had chased it for a response regarding amending his data.

23. On 21 July 2020, the MoJ sent an email to Mr T acknowledging his complaint of 6 July 2020.
24. On 19 September 2020, Mr T sent an email to the MoJ and said he had not yet received a response to his complaint.
25. On 11 November 2020, the MoJ sent an email to Mr T apologising for the delay in responding to his email of September 2020. It had reviewed its paperwork and could see that XPS had responded to his stage one IDRPs complaint on 7 July 2020. If he wished to pursue the matter, he could appeal further under stage two of the IDRPs.
26. On 19 November 2020, the MoJ sent an email to Mr T and said that on further review with XPS it had confirmed that it did not have a record of Mr T's communication setting out the commencement dates he held for comparison against its records. It asked if he could send this information through along with any related documents so that this aspect of his data query could be investigated.
27. On 22 November 2020, Mrs T sent an email to the MoJ on Mr T's behalf. She said that she was not sure if it was aware but:-
 - In an email dated 7 January 2018, Mr T had notified XPS that the initial Benefit Statements he received were inaccurate/incomplete. He provided scanned evidence of what he considered his accrued pension entitlement to be. He did not get a response. She was resending the original emails with the evidence attached.
 - Mr T also sent hard copies of this information through the post.
 - In June 2018 Mr T received a letter from the MoJ which said there were problems sorting out his accrued pension entitlement, but it assured him the issue would be resolved.
 - Mr T heard nothing further until his Benefit Statements at 5 April 2018 and he was not sure these were based on the correct information.
 - Mr T still had no response to either the emails or the recorded delivery package he sent in January 2018. It had, to date, cost him over £3,000 in printing and postage and his time spent in providing this information.
 - He had also made a complaint under stage one of the IDRPs which was not progressed by the MoJ.
 - Earlier that month he raised a complaint under stage two of the IDRPs and was urgently awaiting a decision. All the relevant information in order to investigate this data query had been sent and it was concerning that it had again asked him to resubmit the particulars of the data he held.
28. On 31 January 2021, Mrs T sent an email to the MoJ and said all the requested information was sent again in November 2020. She asked when Mr T would receive

an acknowledgement of receipt of this information, a confirmation of correction of his pension records and the outcome of stage two of the IDRPs.

29. On 9 February 2021, the MoJ emailed Mr T:-

- It could not find a copy of his request for a stage two IDRPs decision. It asked Mr T to confirm that his complaint covered the following points:-
 - Incorrect Benefit Statements were issued to him in 2018. He raised a query in January 2018, and this had not been resolved.
 - His formal complaint remained unaddressed from January 2018.
 - His commencement days for his appointments were incorrect.
- To be able to investigate his complaint it asked Mr T to forward a copy of his original complaint as it had reviewed its email records and could not find a record of it.
- Similarly, it could not identify where he had said that the commencement dates for his appointments were incorrect although it was able to see that he had questioned why he did not receive a Benefit Statement in January 2018 for his Tribunal Three appointment. It asked him to forward a list of all his appointments and dates for cross comparison against records held by MoJ and XPS.
- With respect to the hard copy submission in January 2018, it could advise that the FPJPS Data Claims teams had not had access to the office for a number of months, so it was not possible to review a copy of this submission. If he had a scanned copy, it would be helpful if he would forward this when he was responding.
- It could advise that his IDRPs stage two complaint was to be reviewed at the next Dispute Resolution Committee meeting.

30. On 14 February 2021, Mrs T sent an email to the MoJ and said:-

- The completed stage two IDRPs request was sent by Special Delivery in October 2020. She did note though that there may not have been anyone in the office to receive it due to Covid 19 restrictions.
- The letter accompanying the Benefit Statements in January 2018 asked that Tribunal Judges confirm that the number of sitting days shown were correct and if they were not to provide evidence to support amending the record. Mr T's were incorrect for all three Tribunals. Mr T's full evidence of all his sitting days going back to 2007 for Tribunal Two and to 2010 for Tribunal One were printed out and sent by email and post in January 2018 and then submitted again by email in November 2020.

- They did not feel that the subsequent Benefit Statements reflected the correct sitting days as Mr T had sat for a longer period with more sitting days in Tribunal Two but Tribunal One showed a comparable accrued amount. The Benefit Statements did not show the sitting days, nor did they show the calculation to convert the actual sitting days to the yearly entitlement. Without any idea of the sitting days that had been taken into account they were not confident that the Benefit Statements were correct.
 - The January 2018 complaint was sent at the time by Special Delivery and sent again by email in November 2020.
 - If the records were incomplete, could it just state this and they would fill in any blanks and send the relevant documentary evidence. They would rather not have to send in over 300 pages of evidence again.
31. On 28 May 2021, the MoJ sent an email to Mrs T and said it had an update on the review of Mr T's sitting data against the records provided. It said in summary:-
- It had attached a copy of the annual breakdown. The review had focussed on sitting days from 2015/16 onwards.
 - The query in relation to sitting days from 2007/08 to 2014/15 had been referred to the Judicial Claims Team within the MoJ for an urgent response. An update would be provided as soon as their investigation was concluded.
 - In respect of Mr T's service from 2015/16 onwards, as he joined the JPS2015 on 1 April 2015 any sitting data would be held under this scheme. This was why the FPJPS statements issued in January 2018 had 0 sitting days for this period. Mr T should have received separate Benefit Statements for his JPS2015 pension service since April 2016.
 - The information also appeared differently on the annual Benefit Statement as the calculation of pension entitlement under FPJPS related back to the number of sitting days, whereas for JPS2015 it related to the pensionable earnings in each year, which were then revalued.
 - Following its review, it noted that Mr T's Tribunal Three appointment was not enrolled in the FPJPS pension. Further investigation would be required with the payroll administrator, to confirm the earnings and calculate any arrears of contributions that may be due.
 - Mr T's stage two IDRPs complaint was being progressed for consideration at the next Dispute Resolution Committee meeting on 16 June 2021.
32. On 10 June 2021, the MoJ sent an email to Mrs T and said it had not been able to find any communication from January 2018 raising a complaint and if she could provide a copy of this. Additionally, if Mr T disputed the commencement dates provided in the spreadsheet attached to its email of 28 May 2021 could information

be provided as to why they were incorrect so it could be considered by the Dispute Resolution Committee.

33. On 12 June 2021, Mrs T sent an email to the MoJ. She provided a copy of the letter that had been sent in January 2018 and said their complaint points were:-
- They had asked for dated daily sitting information held by MoJ from the start of each period of employment to date.
 - They wanted to assure themselves that they could reconcile each dated daily sitting day that the MoJ claimed was eligible for pension against Mr T's records.
 - They remained unconvinced that it had received and actioned all the evidence they provided in 2018.
 - They remained concerned that dated daily sitting information that was eligible for pension was incorrect as Mr T had more sitting days in Tribunal Two than he did in Tribunal One and yet the amount for accrued pension was similar in each.
34. On 15 June 2021, the MoJ sent an email to Mrs T and thanked her for the copy of the letter dated 27 January 2018. This had previously been received, however, as there was no mention of a complaint in the letter, it was not apparent that this was the letter being referred to. This would now be shared with the Committee for consideration the following day.
35. On 1 July 2021, the MoJ issued its stage two decision. In summary, the MoJ said:-
- It accepted that there had been poor handling of his case by the MoJ. It should have carried out an initial review following the information he had provided in January 2018 and requested more information from him regarding the disputed dates where it needed this.
 - It was not aware of a discrepancy in his commencement dates.
 - It had reviewed his claim for financial loss and had recommended an award of £1,000 for the distress and inconvenience caused to him by its errors.
 - The breakdown of sitting days for each of his records was currently being finalised and would be issued in the next week.
36. On 16 July 2021, the MoJ sent an email to Mr T and apologised for the delay in providing the sitting days data. This was currently being checked. It fully accepted that the extended delay would have caused him further inconvenience. In recognition of the additional delay, the MoJ felt that it was appropriate to increase its offer from £1,000 to £1,500 in recognition of the distress and inconvenience caused to Mr T.
37. Following the complaint being referred to TPO the following additional submissions were provided.

The MoJ's submissions

38. Mr T's complaint relates to incorrect Benefit Statements for each of his Tribunal One and Two roles and that he was not sent a statement for his role in Tribunal Three.
39. It was unable to locate evidence of a discrepancy in commencement dates. A review of Mr T's appointments was undertaken comparing its records against XPS's records and Mr T's correspondence. XPS was asked to provide a copy of the communication from Mr T in which he outlined the disputed dates; however, no correspondence was located where Mr T stated the dates he believed should apply.
40. A detailed breakdown of sitting days for each year and role should have been sent to Mr T in July 2021 however this required further checking before release. Regrettably, due to pressures within the team this was delayed and owing to an oversight was subsequently missed. It has since been forwarded to Mr T on 5 April 2022.
41. Mr T's Tribunal Three role had now been correctly dealt with, and no arrears of contributions were due.
42. It recognised that engagement with Mr T should have begun at a much earlier stage and a review of the data should have commenced following receipt of Mr T's original query in January 2018. In addition, the breakdown of the sitting days data had taken longer to provide than should reasonably be expected. In recognition of this further delay, it considered it appropriate to raise the amount being offered to Mr T from £1,000 to £1,500.
43. Mr T was seeking reimbursement of the cost of his time taken to compile information regarding his sitting days and he had based this on his daily fee rate. Based on six days and a daily fee rate of £491.69 this amounted to £2,950.14. In addition, he was seeking reimbursement of fees relating to printing, postage and scanning of this information.
44. Compilation of this data was an inherent part of the standard procedure carried out by the MoJ's Data and Claims Team when reviewing its internal records. This was normally carried out when that Team was investigating queries similar in nature to Mr T's. Data was normally only requested from a member where there was a disagreement over the data collated. It could not find any instance where it requested information from Mr T.
45. On this basis, it did not believe Mr T's request for reimbursement of the cost of his time would be appropriate. The distress and inconvenience caused should be recognised through the increased offer of £1,500.

Mr T's submissions

46. His pension entitlement was based on each time he sat and whether that day was an 'eligible day' within the pension rules. When his sitting day was cancelled within three working days and he had turned down paid employment, he was paid a cancellation

fee. Cancellations were not categorised as eligible sitting days within the pension rules. As such it was of critical importance that each sitting day, not just the amount paid, was correctly recorded by XPS.

47. The covering letter he received with his Benefit Statements in January 2018 advised that if he did not respond regarding any discrepancies by 31 March 2018, it would be assumed that the statements were accurate. He sent his evidence that the statements were incorrect in January 2018 by email and by post. The information he provided was not acknowledged. He did receive an email on 15 February 2018 stating that no evidence of errors had been received and the only action taken was to correct his date of birth.
48. He was advised in April 2018 that the evidence had been received but he needed to be patient due to the high volumes of responses in regard to sitting days in addition to the normal high levels of workflow that XPS and MoJ were currently experiencing.
49. On 11 June 2019, he received a general letter from the MoJ which noted that there were issues sorting accrued pension entitlement. He took this to mean that he should continue to await notification of the rectification of the discrepancies.
50. He heard nothing further regarding the outcome of his sitting days query until July/August 2019 when he received further incorrect Benefit Statements. Given he had sat twice as many times in Tribunal Two as he had for Tribunals One and Three, he recognised instantly that, despite having received his evidence 18 months earlier, the MoJ had still not corrected his entitlement.
51. On 7 July 2020, the MoJ provided the first evidence of commencement dates they held. There was no record for Tribunal Three even though his first payslip was on 31 August 2014. For Tribunal One the date he joined was listed as 3 November 2008 when this should have been 28 September 2011. For Tribunal Two, although the date he joined the Scheme was shown as 16 January 2007, his first pensionable salary was shown as being payable in the 2010-2011 financial year when this should have been on 22 May 2008.
52. The revised breakdown of all his sitting dates that the MoJ had provided still had missing information:-
 - Tribunal One: 83% of eligible pension fees were missing from their records (£246,580.67).
 - Tribunal Two: 79% of eligible pension fees were missing from their records (£333,633.72).
 - Tribunal Three: 81% of eligible pension fees were missing from their records (£4,531.50).

In total £584,745.89 of eligible pension fees were missing from MoJ records.

53. The purpose of the Benefit Statement was to allow the individual to consider their future pension entitlement. This was not possible with the inaccurate and incomplete information held by MoJ and XPS.
54. In addition to the costs, he had previously incurred, he had now spent an additional five days checking the information provided by the MoJ. His current daily rate was £521.80. So, he had incurred an additional cost of £521.80 x 5 = £2,609.

Further developments

55. On 7 January 2024, Mr T sent an email to MoJ and asked it to provide accurate information regarding his pension benefits so he could consider his options for retirement. He asked for confirmation that his pre-1 April 2015 pension records had been updated with the sitting information that he had provided in January 2018.
56. On 18 January 2024, the MoJ sent an email to Mrs T and said it had calculated Mr T's retirement options under the Judicial Pension Scheme 2022 (**JPS2022**) and attached it to the email.
57. On 22 January 2024, Mrs T sent an email to the MoJ and said that Mr T had received the illustration for his pension from JPS2022 from 1 April 2022, but the bulk of his pension was accrued prior to this date. He was waiting for an update of when his pre-1 April 2015 data had been updated so that he could have correct pension illustrations.
58. On 21 February 2024, Mrs T sent an email to the MoJ and said Mr T was still waiting for a full reconciliation of his pensions accrued prior to 1 April 2015 and this was needed for possible retirement from May 2024. Mrs T asked when this would be completed as Mr T still did not have any up-to-date Benefit Statements to help him decide the timing of his retirement.
59. On 12 April 2024, XPS sent an email to Mr T and said there was a discrepancy of 60.9 sittings days between the data he had provided in respect of his fee-paid roles against that provided to XPS by the MoJ. It could confirm that it had contacted the MoJ highlighting the difference in the data. XPS said this was the reason for the delay and why it had not been able to provide him with a retirement illustration that accurately reflected his position in the FPJPS. In the meantime, XPS could provide a basic estimate of his annual pension for each of the three roles based on the sitting days he had provided.
60. On 14 April 2024, Mrs T sent an email to XPS and said in summary:-
- While Mr T was very pleased that XPS was near an agreed position on his total pension provision, this had taken six years to update and remained outstanding only a month from Mr T's retirement date. Mr T had not yet received an up-to-date and accurate pension illustration to inform his decision making, despite giving over five months' notice that this would be required.

- They were assured that a full comparison had been made of Mr T's data held by the MoJ. Mrs T asked it to provide a list of the dates and jurisdictions that had not been accepted, and they would provide once again, payroll and claim information for any differences.
61. On 22 April 2024, XPS sent an email to Mrs T and said that it did not hold dates and jurisdictions that it considered not accepted. XPS was only provided with Mr T's pensionable sitting data from the MoJ. As soon as its records were updated with Mr T's revised data, it would arrange for the pension quotations to be issued under the FPJPS.
62. On 13 May 2024, Mrs T sent an email to the MoJ. She said that XPS had stated it was not able to provide a full retirement quotation for Mr T because the MoJ were still disputing the final 60.9 days that it was unable to reconcile. Mrs T asked it to provide:-
- A list of the dates for the 60.9 days that were still disputed, so she could send the payroll records and claim forms relating to any disputed dates.
 - XPS with confirmation of the dates that were not disputed so that it could issue more approximate illustrations to allow Mr T to decide if he could retire in May 2024.
63. On 6 June 2024, the MoJ sent an email to Mrs T and said that it had now provided the sitting data requested by XPS. It had also requested that XPS confirm once the data had been amended and available for her to view online.
64. The same day, Mrs T sent an email to the MoJ and said that there were still some dates that had been provided that were not treated as pensionable. She requested a list of those dates which had been excluded so that, once again, she could provide the electronic evidence that these should be pensionable.
65. On 16 July 2024, Mrs T sent an email to the MoJ. Mr T had confirmed that he would be retiring on 31 August 2024 and would like all his pensions to start from 1 September 2024. There was still a discrepancy of 60.9 sitting days and they had repeatedly asked for the dates of the sitting days still disputed by MoJ, but these had still not been provided.
66. On 3 September 2024, the MoJ sent an email to Mrs T and said it had sent all the data to XPS, including the discrepancy of the 60.9 sitting days. XPS should now have received this information and updated Mr T's record accordingly.
67. On 19 October 2024, Mr T sent an email to XPS and said there were still issues outstanding with his pension benefits including the difference of 60.9 sitting days.
68. On 24 October 2024, XPS sent an email to Mrs T and said that the 60.9 sitting days were now included in its records and so the figures provided in the FPJPS retirement

pack which was issued on 30 August 2024 were calculated based on the final correct data.

69. On 4 November 2024, XPS sent an email to Mrs T and said that Mr T's pension from the FPJPS would be in payment by the end of November 2024.

Adjudicator's Opinion

70. Mr T's complaint was considered by one of our Adjudicators who concluded that further action was required by the MoJ. The Adjudicator's findings are set out below in paragraphs 71 to 79.
71. The MoJ and XPS agreed that it had taken a very long time to correct Mr T's pension records, so there was no dispute that a problem had occurred, and that Mr T had been disadvantaged as a result. The Adjudicator said it was important to first note, that Mr T's record had now been amended to his satisfaction, more than six years since he first raised the matter with XPS. As such, the matter that remained to be considered was the impact the delay in putting the matter right had on Mr T.
72. The MoJ made an offer to Mr T of £1,000 for the distress and inconvenience caused to him by its maladministration in its July 2021 IDR stage two decision letter. It then increased the offer to £1,500 on the basis that it had delayed sending Mr T the information it was collating about his sitting days. Mr T rejected this offer. He said a higher amount should be given for the time he spent preparing evidence of his actual sitting days based on his daily rate as a Tribunal Judge. He also asked for his printing costs.
73. The Adjudicator said the approach normally taken by the Pensions Ombudsman was that a successful applicant would not usually be reimbursed at a working rate for time spent trying to resolve problems with respondents. In this case, Mr T did use his own time and did print out the materials he sent to the MoJ. However, this was to try to resolve the issues with his own pension rather than duties he undertook through his employment. The time and printing costs incurred by Mr T should instead be recognised by a payment for the distress and inconvenience caused to him.
74. The Adjudicator considered whether the offer of £1,500 was appropriate based on the circumstances. Mr T originally provided evidence of his sitting days in January 2018, and he had to repeatedly chase XPS and MoJ to receive an acknowledgement of whether the information he had provided had been received. The MoJ did inform Mr T that there was a widespread problem with the reconciliation of the sitting data for other members of the FPJPS and Mr T waited to see if the extra resource that was promised would resolve the issue. However, it became apparent from the Benefit Statements that were issued in July 2018 and August 2019 that the sitting days were still incorrect.
75. Mr T then had to resend the January 2018 information to the MoJ in November 2020 and at this point Mr T's stage two IDR complaint was acknowledged. In February

2021 the MoJ asked for the January 2018 information again and it also asked for details of Mr T's stage two IDRPs complaint to be resent to it. The stage two IDRPs complaint response was issued in July 2021 and at that point the MoJ was still working on a breakdown of the sitting data.

76. In the Adjudicator's opinion, Mr T had been very patient with the extended delays regarding the updating of the sitting data and it was clear that the failure to review and update this information in a timely manner was maladministration. At the time the offer for distress and inconvenience was made the assumption was that the issue was close to resolution. In the Adjudicator's view the offer of £1,500 was appropriate at that time. However, as it became apparent that the issue had not been resolved and was still ongoing a higher award should now be made.
77. The sitting data that was due to be provided to Mr T in July 2021 was not actually sent until April 2022 due to an oversight. Mr T was able to identify from the information that was provided that there was no record of any sitting days for the Tribunal Three and a number of days were still missing from his other Tribunal records. Mr T did highlight, in his email of 8 January 2018, that he had not received a Benefit Statement for the Tribunal Three. It then took until April 2022 for the MoJ to acknowledge that he had not been enrolled in the pension with regard to this Tribunal.
78. In 2024, Mr T wanted to consider his retirement options and the MoJ had still not confirmed that his pension record in the FPJPS had been fully updated regarding the sitting days information. It took repeated chasing from Mr and Mrs T to resolve the issue, and the payment of Mr T's pension was delayed until evidence regarding the final contested 60.9 days was considered by the MoJ and Mr T's pension record was amended. Clearly, Mr T's pension record would not have been updated to the correct position without extensive input from Mr and Mrs T. The whole process took over six years, which in the Adjudicator's view was completely unacceptable. This was further exacerbated by the poor record keeping that meant Mr T had to resubmit extensive supporting evidence multiple times over an extended period.
79. In view of the fact that it took a further three years to resolve the issues following the MoJ's acceptance that its actions amounted to maladministration the Adjudicator's opinion was that the distress and inconvenience caused fell into the exceptional category (in line with the Pensions Ombudsman's current guidelines¹) and the amount of distress and inconvenience awarded to Mr T should be increased to £3,000 to recognise the level of distress and inconvenience caused to Mr T.
80. Mr T did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr T.

¹ https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/Updated-Non-financial-injustice-September-2018-2_0.pdf

Mr T's comments

81. The amount of distress and inconvenience awarded was derisory. He felt that £10,000 was a more appropriate amount.
82. He believed that in calculating his award the Adjudicator had:-
- fettered their own discretion with regard to the size of that award;
 - failed to afford sufficient weight to the details of his claim; and
 - mis-applied the decisions in the cases of Lambden and Foster².

Ombudsman's decision

83. I have reviewed the information provided. I cannot see any evidence that the Adjudicator has not fully considered the details of Mr T's complaint, and I agree with the Adjudicator that the, very considerable, amount of time taken by the MoJ to update Mr T's pension records was maladministration which caused Mr T exceptional distress and inconvenience.
84. Mr T says the Adjudicator's recommended award for this of £3,000 is derisory and cites the Ombudsman cases of Lambden and Foster, which are provided as examples of awards for exceptional distress and inconvenience in the Pensions Ombudsman's current guidance for non-financial injustice.
85. In Mr Lambden's case the respondent had provided him with incorrect information regarding his length of service and the error only came to light once Mr Lambden had resigned from his employment and was expecting to move to New Zealand with his family. Mr Lambden was also not in a position to mitigate the consequences of his reasonable reliance on the incorrect information. In that case, the previous Ombudsman found that Mr Lambden's circumstances were highly exceptional and made an award of £5,000 for the distress and inconvenience caused to him by the Respondent's error.
86. In Miss Foster's case, she was incorrectly told she could carry on contributing to a scheme despite reaching the maximum 45 years pensionable service. She was told that she would benefit from a higher final pay figure at retirement. Miss Foster relied on the incorrect information and carried on working past her normal retirement date in the reasonable expectation of increased benefits. The previous Ombudsman agreed that it was likely that Miss Foster would have retired at an earlier date if she had been provided with the correct information. Again, the circumstances were considered to be exceptional and an award of £4,000 was made for the non-financial injustice caused to Miss Foster by the Respondent's maladministration.

² Lambden (74315/3) and Foster (82418/1).

87. The purpose of providing such examples in the guidance is to show the different elements that are considered when making an award for distress and inconvenience. However, previous Determinations do not act as case law that direct how I should approach later cases. Rather, each case is considered on its own merits. I am satisfied that the Adjudicator did that in their consideration of Mr T's complaint and in reaching their view that the MoJ should pay Mr T £3,000 for exceptional distress and inconvenience caused.
88. Nonetheless, Mr T would like me to direct the MoJ to pay him £10,000. Awards for non-financial injustice are intended to provide some modest recognition that the individual has suffered distress and inconvenience. They are not intended to be punitive nor are they calculated using the methodologies adopted by the Courts or Employment Tribunals.
89. The Courts have confirmed³ that the Pensions Ombudsman has the power to direct a payment for distress and inconvenience (i.e. for non-financial injustice) sustained as a consequence of maladministration. There needs to be a causal link between the distress and inconvenience suffered and the maladministration.
90. Originally, the Courts indicated that an award of up to £1,000 might be appropriate, other than in exceptional cases. However, the upper level of awards was reviewed by my predecessor following the *Baugniet v Capita Employee Benefits* [2017] EWHC 501 (Ch) and *Smith v Sheffield Teaching Hospitals* [2018] 004 PBLR 004 (011) cases, and our current approach is now set out in a guidance note issued in 2018 entitled Redress for Non-Financial Injustice (the **Guidance**). This is reviewed from time to time.
91. The Guidance sets out the typical level of award for distress and inconvenience in different situations, together with the general approach taken to determining the severity of the distress and inconvenience sustained. It is hoped that publishing the Guidance allows parties to understand the process followed and the level of distress and inconvenience award that might be made if a case were to progress to Determination. In turn, this might allow the parties to find a mutually acceptable settlement at an early stage, before the complaint is made to my office.
92. However, I cannot bind myself in advance and each case is always assessed on its own merits. The factors I look at when deciding whether an award is appropriate include: the level of distress and inconvenience sustained and for how long; the number of occasions on which the maladministration manifested itself; whether the respondent took steps to remedy the situation and how quickly it took those steps; whether the applicant's health or wellbeing was affected; any failure to respond (including the approach taken to complaint handling and dealing with my office, such that it might exacerbate the distress and inconvenience) and whether there were any other aggravating factors. The weight I give to these factors will vary depending on the circumstances of the case. In appropriate cases, I (and past Ombudsmen) will

³ For example, see *Westminster City Council v Haywood* [1996] 2 All ER 467 (obiter), as confirmed in *City and County of Swansea v Johnson* [1999] 17 PBLR, and in also later cases.

depart from the general guidance on the appropriate level of awards and can (and do) make higher awards – although it is rare. I also keep the level of awards under review.

93. In this case, I agree with the Adjudicator that the length of time that it took to resolve the issue complained of was unacceptably and exceptionally long (even when recognising the understandable delays for Covid). I have taken into account the effort that Mr T put into corresponding with the Respondent to correct the mistakes (although I do not agree that entitles him to charge his daily rate for that time), and the other points he made. The non-financial injustice suffered was, in my view, exceptional and warrants, unusually, an award in excess of £2,000.
94. In the circumstances, I agree with the Adjudicator that an award of £3,000 for exceptional non-financial injustice is appropriate
95. I uphold Mr T's complaint.

Directions

96. Within 28 days of the date of this Determination the MoJ shall pay Mr T £3,000 for the exceptional distress and inconvenience caused by its maladministration.

Dominic Harris

Pensions Ombudsman
17 March 2025