

Ombudsman's Determination

Applicant	The Estate of Mr H (the Estate)
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Durham County Council (the Council)

Outcome

1. I do not uphold this complaint and no further action is required by the Council.

Complaint summary

2. Mr H's son, Mr JH as the executor of the Estate, has complained about the distress and inconvenience he and his family have suffered, as a result of the Council's maladministration in deducting £747.29 (the **Sum**) from the death grant Mr H was awarded following his wife's death.

Background information, including submissions from the parties

3. Mr H's wife was a pensioner member of the Scheme when she died. Following her death, Mr H was awarded a death grant and a spouse's pension.
4. In February 2020, the Council deducted the Sum from Mr H's death grant. The Council had recovered the Sum as it was paid to Mr H's wife after she had died, so it was deemed an overpayment.
5. Subsequently, Mr H raised a complaint to the Council about the deducted Sum. He was not happy that the Sum had been deducted from his death grant, as he was not the beneficiary of his late wife's overpaid pension. He wanted the Council to refund the Sum and also send a letter of apology.
6. On 31 July 2020, the Council sent a letter to Mr H (the **July Letter**). In summary the July Letter said:-
 - Mr H had provided information which indicated that he was not the beneficiary of his late wife's overpaid pension.

- It apologised for the recovery of the Sum and explained that the Sum had been refunded in Mr H's July 2020 pension payment. The total amount refunded was £750.94 and this included interest at 1% over the Bank of England's base rate.
7. In August 2020, there were further exchanges between the Council and Mr H's granddaughter concerning the interest payable. The Council agreed to pay interest on all the pension Mr H had become entitled to, following his wife's death, instead of just interest on the refunded Sum. This increased the interest that was paid from £3.85 to £359.
 8. Mr H died on 23 September 2020.
 9. Mr JH says:

"...We as a family have been caused significant distress together with huge inconvenience & disappointment in dealing with this ongoing saga.

We...ask... the Pensions Ombudsman to ask [the Council] to send us a formal apology together with a recommendation that they compensate us with a payment for our non financial loss which has been & still is most significant...

We admit that no amount of financial compensation can ever make amends for the mental anguish that this has had on my family but [the Council] has to [be] made aware of its lack of sympathy that it affords family members of bereaved loved ones."

Adjudicator's Opinion

10. The 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 Adjudicator appreciated that the Council deducting the Sum from the death grant Mr H was awarded would have been frustrating and disappointing to him. However, she explained that it is not in my remit to punish or chastise a respondent. Instead, my role is to ensure errors are corrected in a timely fashion and where necessary, appropriate levels of redress are made.
 - In this case, it was the Adjudicator's view that the Council had rectified the matter within what I would have likely deemed a reasonable time. So, it was her view that I would not direct the Council to make an award to the Estate for the distress and inconvenience this situation may have caused Mr JH or his family.
11. Mr JH did not accept the Adjudicator's Opinion. In response he said in summary:-
 - The letter of apology was in fact an email from the Council apologising for the confusion caused on its part, for not being clear when the payment of the Sum would be made to Mr H.

- Neither Mr H nor the Estate had ever received a formal written apology from the Council for its lack of any sympathy in this matter, and the time taken to deal with their concerns.
 - The Council took a very long time to accurately research to where the original payment of the Sum was made.
12. The complaint was passed to me to consider. Mr JH's additional comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

13. Mr JH's complaint concerns the distress and inconvenience he and his family suffered as a result of the Council deducting the Sum from the death grant Mr H was awarded.
14. I find that the Council incorrectly deducting the Sum from the death grant that was payable to Mr H amounted to maladministration. This maladministration would have caused Mr H distress and inconvenience, as he was grieving for his wife at the time.
15. The Council rectified its maladministration within five months. It apologised for the deduction of the Sum, refunded it and included interest of £3.85. Following a complaint by Mr H's granddaughter, it then agreed the following month to pay interest on all the pension Mr H was awarded following his wife's death, which increased the interest to £359.
16. I consider that the Council rectified its maladministration in a timely manner, prior to Mr H's death, and it offered appropriate redress to Mr H, in the form of the increased interest and an apology.
17. I do not direct the Council to make a further award to the Estate for any non-financial injustice Mr JH and his family may have suffered.
18. I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
6 December 2022