

## Ombudsman's Determination

Applicant	Mr D
Scheme	Police Pension Scheme ( <b>the Scheme</b> )
Respondent	Gloucestershire Constabulary ( <b>the Constabulary</b> )

## Outcome

1. I do not uphold Mr D's complaint and no further action is required by the Constabulary.

## Complaint summary

2. Mr D has complained that he should be allowed to retire early at age 50 but that this option is being incorrectly denied by the Constabulary on the basis that the career breaks he took are not recognised as qualifying service under the Scheme.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. The Scheme is governed by the Police Pensions Regulations 1987 (**the Scheme Regulations**) and Part B(1) provides that:-

### **"Policeman's ordinary pension**

(1) Subject to paragraphs (2), (4) and (6), this Regulation shall apply to a regular policeman who retires or has retired when entitled to reckon at least 25 years' pensionable service unless Regulation B3 (policeman's ill-health award) applies in his case.

[...]

(5) Subject to the provisions of these Regulations, a regular policeman to whom this Regulation applies shall be entitled to an ordinary pension of an amount calculated in accordance with Part I of Schedule B, subject however to Parts VII and VIII of that Schedule; but, in the case of a person entitled to reckon less than 30 years' pensionable service, no payments shall be made

on account of the pension in respect of the period (if any) after his retirement and before he has attained the age of 50 years or, if he sooner becomes permanently disabled, before he becomes so disabled.”

5. Part B(4) of the Scheme Regulations states:-

**“Policeman’s deferred pension**

[...]

A deferred pension under paragraph (2) or (3) shall be calculated in accordance with **Part VI of Schedule B**, subject however to **Parts VII and VIII of that Schedule**; but no payment shall be made on account of the pension—

(a) in respect of the period before the regular policeman attains the age of 60 years or, if he sooner becomes permanently disabled and he is not ineligible under **regulations G7 and G8** for a pension award payable on the ground of permanent disablement, before he becomes so disabled,”

6. Kent Constabulary’s website that provides information regarding the Scheme in another area outside of that managed by the Constabulary states:-

“What happens when you opt out

If you opt out of [the Scheme] with more than 25 years qualifying service, but less than 30 years – the deferred pension will be paid at age 50 providing you are no longer a serving police officer...”

7. The Scheme’s 1987 guide for members, the Police Pension Scheme 1987 Members’ Guide, (**the 1987 Scheme Guide**) states:-

“Approved career break

A period when [the Constabulary] has agreed that you can take extended unpaid leave with the right to return to work at the same rank as when you left. During this time, your continuity of service is maintained. Even though you are not paying pension contributions, and will not accrue pensionable service, you will remain a member of [the Scheme] (unless you have opted out) and will be able to resume contributions on your return to work.”

8. On 31 October 1999, Mr D commenced employment with the Constabulary and joined the Scheme.

9. In 2003, the Home Office, the Government Department responsible for the Scheme published Home Office Circular 33/2003 (**the Home Office Circular**), which stated:-

“Pensionable status during career break

An officer remains a member of the [police] force whilst on career break and therefore remains part of [the Scheme], unless he or she has made an

election to opt out of [the Scheme]. The period spent on career break should therefore be treated as qualifying (**but not [pensionable]**) service.”

10. On 5 February 2019, the Constabulary wrote to Mr D confirming that a five-year career break from 14 February 2019 (**the first career break**) he had requested was agreed. The Constabulary also said that Mr D should seek independent financial advice and referred to a copy of the Scheme’s ‘Career Break Policy’ that was attached to the letter confirming that:-

**“2.7 Pension**

While on a career break, the individual’s pension will be deferred and all benefits protected. Pension contributions will cease and the break in service will not count towards pensionable pay/service...”

11. On 20 August 2020, Mr D emailed XPS Administration (**XPS**), the Scheme’s administrator, enquiring whether the period he had taken as a career break would be recognised as ‘qualifying service’ in order to claim early retirement from age 50 in November 2024.
12. XPS emailed Mr D in response and said that he would need to accrue at least 25 years of pensionable service by paying contributions to retire at age 50; career breaks were not considered to be part of that qualifying period. XPS said Mr D would need to accrue a further 5.5 years of pensionable service to retire at age 50.
13. Mr D emailed XPS and said he understood that career breaks were not pensionable but should be included as part of his ‘qualifying service’, meaning his total period of membership, including the career breaks. Mr D said that qualifying service should be used when establishing entitlement to early retirement at age 50, and he ought to qualify on that basis.
14. On 27 August 2020, XPS emailed Mr D and said:-
  - If a member employed by the Constabulary on a part-time basis made contributions for 25 years but only accrued 15 years of pensionable service during that period, they would qualify for early retirement at age 50.
  - While Mr D’s membership would be spread over 25 years in November 2024, he would not have made contributions over the entirety of that period. So, he would not be entitled to retire under Scheme Regulation B1 at that time.
15. On 5 October 2020, Mr D complained under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) and said:-
  - According to the 1987 Scheme Guide and the Home Office Circular, the career breaks he took should be considered ‘qualifying service’ even though those periods were not recognised as pensionable service.

- He left the Scheme in March 2015 having previously joined in October 1999. So, by November 2024, he would have accrued 25 years of 'qualifying service', which should entitle him to claim the deferred benefits at that time.
16. On 23 November 2020, Mr D resumed his employment with the Constabulary early, having taken a career break of only 648 days.
  17. On 15 March 2021, the Constabulary wrote to Mr D in response to his complaint under stage one of the IDRPs and said:-
    - The Home Office Circular had not referred to payment of deferred benefits. That correspondence related to a policeman's ordinary pension, short service benefits following voluntary redundancy or ill-health pension, which was not applicable in his case.
    - He had accrued less than 25 years of pensionable service and was not required to retire based on age or permanent disability. Since he had also not reached the age at which voluntary retirement was possible, he could only qualify for a deferred pension. The payment date of such benefits were covered by Scheme Regulation B5 (4).
    - A career break of five years would not be recognised as pensionable service that would entitle him to retire at age 50. The Constabulary had no discretion under the Scheme Regulations to permit him to do so.
  18. Subsequently, Mr D referred his complaint to The Pensions Ombudsman.
  19. On 9 December 2021, the Constabulary wrote to Mr D confirming that following his request, a three-year career break from 23 November 2022 (**the second career break**) had been agreed and Mr D should seek financial advice. The Constabulary also attached a copy of the Career Break Policy, reiterating the information previously provided on 5 February 2019.
  20. On 17 July 2024, Mr D resumed employment with the Constabulary having terminated the second career break early.

### **The Constabulary's position**

21. Mr D has misunderstood the Scheme Regulations in assuming that even after taking career breaks, he was entitled to similar retirement benefits to any other member who had taken no career break. Neither the Home Office Circular nor the 1987 Scheme Guide supported Mr D's complaint.
22. After joining the Scheme, Mr D accrued 15 years and 152 days of qualifying service between 31 October 1999 and 31 March 2015. However, Mr D worked part-time for a portion of that period. So, he only accrued 14 years and 330 days of pensionable service on a proportional basis. From 1 April 2015, Mr D accrued a further three years and 319 days of pensionable service before he commenced the first career break.

23. The letter dated 5 February 2019 encouraged Mr D to seek financial advice regarding his retirement benefit entitlements and included a copy of the Scheme's Career Break Policy. It confirmed that during any career break a member's accrued benefits would be deferred, pension contributions would cease, and the break in service would not then be considered pensionable. So, Mr D ought to have been aware that the first career break would not be pensionable before it commenced on 14 February 2019.
24. Although Mr D was granted a five-year career break, he resumed employment with the Constabulary early on 23 November 2020, having requested to do so. So, the first career break was in fact for a period of only 648 days.
25. The letter dated 9 December 2021, confirmed the second career break for three years from 23 November 2021. It also encouraged Mr D to seek financial advice and included a copy of the Career Break Policy, confirming that his absence would not be pensionable. Despite being provided with this information, Mr D again decided to proceed with the career break. He subsequently resumed employment with the Constabulary on 17 July 2024 but had been on sick leave since that time.
26. A member is not required to opt out of the Scheme during a career break. There is also no option to purchase additional pensionable service to cover the period of any such absence. Mr D's career breaks were not considered pensionable service that would enable him to claim deferred benefits from the Scheme at age 50.

### **Mr D's position**

27. He accrued 14 years and 330 days of pensionable service in the Scheme after considering his period of part-time employment. He did not accrue a further three years and 319 days of pensionable service from 1 April 2015.
28. He is not seeking to claim retirement benefits similar to that payable to another member who had not taken any career breaks. At age 50 the Scheme Regulations should allow him to resign from the Constabulary and claim retirement benefits based on the 14 years and 330 days pensionable service he had accrued.
29. The 1987 Members Guide, the Home Office Circular, and Kent Constabulary's website supported his position regarding early retirement at age 50.

### **Adjudicator's Opinion**

Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Constabulary. The Adjudicator's findings are summarised below:-

- Mr D's claim for early retirement at age 50 assumed that having joined the Scheme in October 1999 and left in March 2015, he had accrued 25 years of 'qualifying service'. Mr D said that this should have allowed him to retire early at age 50, in November 2024, and claim benefits based on 14 years and 330 days of pensionable service.

- The Constabulary was required to act in accordance with the Scheme Regulations, which override the Home Office Circular, Kent Constabulary's website, and the 1987 Scheme Guide referred to by Mr D. Scheme Regulation B1(1) required members, including Mr D, to have accrued at least 25 years of 'pensionable service', rather than 'qualifying service' for entitlement to early retirement at age 50.
  - In the Adjudicator's view, Mr D did not qualify for the early retirement option since he had only accrued 14 years and 330 days of pensionable service. A fact which Mr D acknowledged. Consequently, Scheme Regulation B5(4), which provided for retirement from age 60 was applicable, unless Mr D had made a successful permanent disability retirement claim before that age.
  - Further, the 1987 Scheme Guide and the Home Office Circular did not support Mr D's claim for early retirement at age 50 since both documents confirmed that career breaks were not considered to be pensionable service. The Career Break Policy sent to Mr D with the Constabulary's letters dated 5 February 2019 and 9 December 2021 also confirmed that Mr D's career breaks would not be pensionable service.
  - In the Adjudicator's opinion, Mr D would not have qualified to retire at age 50, even had the five-year career break been pensionable. Those career breaks, added to the 14 years and 330 days of pensionable service Mr D had referred to, would not have amounted to the minimum 25 years of pensionable service required for retirement at age 50. So, in the Adjudicator's view there was no requirement for the Constabulary to pay Mr D's retirement benefits at age 50.
30. The Constabulary accepted the Adjudicator's Opinion, Mr D did not, and the complaint was passed to me to consider. Mr D provided his further comments, which I have considered but they do not change the outcome, I agree with the Adjudicator's Opinion.

### **Mr D's additional comments**

31. Under the Scheme various scenarios for early retirement are applicable. For example, if he had joined the Scheme at age 18.5 and accrued 25 years of pensionable service, his pension would be 'payable at age 50'. If he accrued 30 years of pensionable service having joined the Scheme at age 18.5, he could retire at age 48.5. Alternatively, had he joined the Scheme at age 40, he could 'retire at age 55 with 15 years of pensionable service'.
32. It was because he joined the Scheme before age 25 that the Constabulary assumed he could only retire from age 60. However, the Home Office Circular clarified that career breaks are qualifying service but not pensionable service. Consequently, he qualifies for early retirement from November 2024, having accrued 25 years of qualifying service after joining the Scheme in October 1999.

33. Another member had previously retired early by using qualifying service accrued while he was a Police Cadet. In the 1970s and 1980s, it was possible to accrue qualifying service as a Police Cadet from age 16, even though it was not permitted to join the Scheme before age 18.5. Career breaks are similarly qualifying service that should enable a member to retire early. The Constabulary ought to have clarified in writing that time spent as a Police Cadet would no longer be considered qualifying service if such a change had been implemented since the 1970s and 1980s. However, the Constabulary had failed to do so.
34. A colleague serving in another police force area had accrued qualifying service while on a secondment outside of her force for a year. Since there was no break in police service during that secondment, it ought to have been recognised as qualifying service, but not pensionable service. However, the colleague concerned was required to resume employment with her normal force for a year after the secondment ended to reach 30 years of pensionable service. Had this colleague chosen not to do so and wanted to retire early, it was unclear whether this would have been denied with 29 years of pensionable service.
35. A friend who was a member of the Scheme retired “a few years” ago and had previously been eligible to claim benefits from the 1987 Section of the Scheme (**the 1987 Section**). However, shortly before retirement, after 15 years of service, the friend chose to transfer their 1987 Section benefits into the 2006 Section of the Scheme. There had been no requirement for benefits in the 1987 Section to be transferred immediately, this became an option in 2006; the transfer could be done later or close to retirement.
36. He did not work during his career breaks. But it was unclear whether the Constabulary would have permitted him to transfer any other workplace pension into the Scheme, had he taken alternative employment. Such a transfer would equate to purchasing additional pensionable service rather than being qualifying service.
37. He had considered why career breaks were made qualifying service and formed the opinion that 90% of them had been taken by female members as part of raising a family. If a female member had three children, then took the maximum permitted unpaid leave after each child, followed by a five-year career break, she would be disadvantaged.
38. In that scenario the female member would not be able to retire early, had qualifying service not been applicable. Forcing the female member to wait until age 60 to retire under such circumstances would be unfair. Perhaps this was the reason behind the Home Office Circular regarding qualifying service being considered in determining entitlement to retire early.

### **Ombudsman’s decision**

39. Mr D contends that various scenarios he set out in response to the Adjudicator’s Opinion, show early retirement should be allowed based on his length of qualifying

service, including five years of career breaks. Mr D says that he would have accrued 25 years of qualifying service at November 2024, having joined the Scheme in October 1999. Mr D has also queried whether another member ought to have been allowed to retire early with 29 rather than 30 years of pensionable service.

40. It is impractical to consider and compare any other member's circumstances with that of Mr D's, in determining his retirement date options. The individual circumstances of those other members' cases are confidential and not related to Mr D's complaint. Ultimately, Mr D's retirement options must, in any event, be determined based on the Scheme Regulations. There was no requirement for the Constabulary to rely on the Home Office Circular, Kent Constabulary's website, or the 1987 Scheme Guide. Mr D's comments regarding the reasons why he considers that career breaks may have been qualifying service rather than pensionable service are also irrelevant and have no bearing on his claim for early retirement.
41. The Scheme Regulations do not include any provisions whereby any timescale other than the length of a member's pensionable service can be used in determining their retirement date options. So, I find that the 25 years of qualifying service that Mr D has referred to having accrued between 1999 and 2024 is irrelevant. Under Part B(1) of the Scheme Regulations Mr D was required to have accrued at least 25 years of pensionable service to retire at age 50. Alternatively, Mr D could retire before age 50 with 30 years of pensionable service. By his own admission, Mr D has accrued only 14 years and 330 days of pensionable service.
42. Since Mr D was below age 50 in November 2024, he had accrued insufficient pensionable service to retire at that time. The five years of career breaks that he applied for were not pensionable. But even if those career breaks were deemed to be pensionable service, Mr D would still not have satisfied the minimum requirements to retire under Regulation B(1). Consequently, I find that Scheme Regulation B(4) which provides for a deferred member to retire from age 60 is applicable to Mr D. The Constabulary has correctly concluded that it could not pay Mr D's retirement benefits from November 2024 or at age 50.
43. Mr D has also queried what the Constabulary's approach would have been, had he taken alternative employment during his career breaks, and transferred any related workplace pension into the Scheme. Mr D says that any such transfer would equate to purchasing additional pensionable service in the Scheme. The Constabulary has confirmed that a member is not permitted to purchase additional pensionable service in the Scheme to cover the period of any career breaks. Mr D has, in any case, provided evidence that he did not seek alternative employment while on his career breaks. So, the query that he has raised regarding a transfer into the Scheme is irrelevant.



CAS-57022-H5Y8

44. I do not uphold Mr D's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
4 December 2024