

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Police Pension Scheme ( <b>the Scheme</b> )
Respondent	The National Crime Agency ( <b>the NCA</b> )

## Outcome

1. I agree that the complaint should be upheld against the NCA and to matters right within 28 days the NCA should:
  - reconsider Mr Y's application for a deferred pension and provide an explanation of the decision; and
  - award Mr Y £500 for the distress and inconvenience he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y has complained that the NCA said he is not able to remain in employment and receive a deferred pension under the Scheme. It said his only option is to leave employment and receive an ordinary police pension from the Scheme.

## Background information, including submissions from the parties

4. On 5 March 1979, Mr Y joined the Metropolitan Police and became a member of the Scheme. On 1 June 2006, Mr Y began employment for the Serious Organised Crime Agency (**SOCA**), and remained a member of the Scheme.
5. On 5 March 2009, under section G4(1) of the Police Pension Scheme Regulations 1987 (**the Regulations** (as an appendix to the determination)), Mr Y made an election to cease paying pension contributions into the Scheme. As such he became a deferred member, although he continued to work as a police officer.
6. From 2013 to the present time Mr Y has been employed by the NCA, this was classed as continuous service, but no further contributions were paid into the Scheme.

7. On 16 August 2016, Mr Y began gathering information about taking his benefits when he reached 60 years of age, on 26 November 2016. Mr Y was told, by the NCA, that he could not receive his benefits from the Scheme until he had ceased employment.
8. Mr Y believes that he should be entitled to a deferred pension, because he made an election under G4(1) of the Regulations, to defer his benefits. Therefore, his view was that he should be able to continue to work and receive his benefits. Mr Y took his complaint through both stages of the Scheme's internal dispute resolution procedure.
9. The NCA considered that Mr Y could not continue to be employed by the NCA and receive a pension from the Scheme. This was because it was of the view that Mr Y cannot receive both a salary and a pension from public funds.
10. Mr Y remained dissatisfied and brought his complaint to the Pensions Ombudsman to be independently reviewed.
11. During the Adjudicator's investigation the NCA provided its formal response as follows:

"The main basis for my decision at stage 2 not to uphold Mr [Y]'s allegation that he was entitled to immediate payment of a deferred police pension when he turned 60 years old, is that there is no provision in Regulation B5 of the 1987 Regulations which provides for payment to be made for a person (such as Mr [Y]) who remains employed (in Mr [Y]'s case by the [NCA]).

My view is that by virtue of having at least 25 years reckonable service Mr [Y] is entitled to an ordinary police pension under Regulation B1. This remains the case despite his election under Regulation G4(1), since at the material time he was already entitled to an ordinary police pension by way of having 30 years' service.

In my view, by reason of his entitlement to an ordinary police pension, he is not entitled to a deferred pension by virtue of B5(2)(b). The latter provides the clear terms that a person whose circumstances mean that they are entitled to another award "under the preceding paragraphs" (which include Regulation B1) are not entitled to a deferred pension.

It is for this reason (i.e. the provision of B5(2)(b)) that I consider that Mr [Y] is not entitled to a deferred pension, but rather an ordinary police pension. This is consistent with the fact that Mr [Y] must cease his employment in order to receive payment of his pension and, if he ceases employment, he will then be entitled to payment of his ordinary pension."

## **Adjudicator's Opinion**

12. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by the NCA. The Adjudicator's findings are summarised briefly below:

- Mr Y is not entitled to an ordinary pension under the Scheme at this stage. This is because it is conditional under section B1, of the Regulations, that Mr Y leaves employment in order to receive the ordinary pension, which is not what has happened or what Mr Y would like to do. Consequently, it follows that as Mr Y has not retired, he is not yet entitled to an ordinary police pension under Regulation B1. Therefore, section B5(2)(b) of the Regulation does not apply, and as such Mr Y is not disqualified from being eligible for a deferred pension under Regulation B5.
  - Mr Y would like to continue his employment with the NCA and receive a deferred pension from the Scheme. He believes he is entitled to this because he made an election under regulation G4 to opt out of paying pension contributions and so became a deferred member of the Scheme. On the correct technical interpretation of the Regulations, Mr Y is able to apply for the deferred pension. However, further provisions within the Regulations, relating to abatement, mean that Mr Y may not be able to achieve what he would like.
  - It appears Mr Y would like to continue working for the NCA and receive a full salary along with his pension benefits from the Scheme. It is highly unlikely that Mr Y would be able to receive these without some sort of reduction being made, by way of abatement. There will be a limit to what level of benefits Mr Y is able to receive in addition to his salary, with any pension benefits above the permitted level being subject to abatement, which means he may not receive both his salary and his full deferred pension.
13. Mr Y and the NCA did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y and the NCA provided the following comments which do not change the outcome.
14. Mr Y said the following:-
- he should be able to receive a deferred pension and continue in his role at the NCA;
  - he has lost out on 16 months of pension along with the interest he could have received on this;
  - he does not believe there is a facility within the Regulations to abate his pension; and
  - he believes that as the NCA has said he may be entitled to a deferred pension, although it would be withdrawn under Regulation K4, he should still be able to receive his 25% tax-free cash lump sum whilst he continues to be employed by the NCA.
15. The NCA said the following:

- It accepted that on one interpretation of the Regulations, as Mr Y did not want to leave employment, the premise that he was entitled to an ordinary pension may not stand, as he must retire in order to receive those benefits;
  - It accepted the Adjudicator's view that Mr Y was not disqualified from applying for a deferred pension.
  - However, If the NCA was obliged to consider whether Mr Y should now be paid a deferred pension, it would use its discretion under the Regulation K4 to withdraw Mr Y's pension whilst he remains in employment with the NCA.
16. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr Y and the NCA for completeness.

### **Ombudsman's decision**

17. Mr Y has complained that the NCA have said he is not able to remain in employment and receive a deferred pension under the Scheme. It says his only option is to leave employment and receive an ordinary police pension from the Scheme.
18. It is clear that Mr Y would like to continue working and receive a deferred pension. He believes the fact he made an election under Regulation G4, serves as a loophole to receive both.
19. **The NCA has changed its stance on its interpretation of the Regulation since the start of the investigation of Mr Y's complaint. It now agrees that Mr Y is entitled to a deferred pension under the Regulations but disputes that it is required to pay it for different reasons. I find that the basis of the decision which it made and communicated to Mr Y was incorrect.**
20. Mr Y has argued that he does not believe his pension benefits can be abated, as set out in the Adjudicator's opinion. This is because the Regulations do not refer to abatement. I agree that the Regulations do not refer to abatement, but they do make relevant provision allowing the benefit to be 'withdrawn'..
- 21.
22. I do not agree that Mr Y should be compensated because he has lost out on 16 months of deferred pension, as well as any interest he would have received on this. In my view, Mr Y cannot demonstrate that he has suffered loss because a decision properly made under Regulation K4 may in any event result in an outcome that he is not entitled to the payment of his pension while employed. I make no finding about that, because as yet no NCA decision maker has actually made a decision under Regulation K4. Bearing in mind the parties have expressed views about the policy which was in place and opposing views about whether it has been applied to others, I consider it would be premature for me to express any view about a decision under

Regulation K4 which has not yet been made, or about any policy which may be applied to it.

23. Separately, I have considered whether NCA's explanation of how it had applied the Regulations constituted maladministration causing significant injustice to Mr Y. I conclude that it did because the Regulation creating the right to the deferred benefit is plain and I sympathise with Mr Y's frustration at being told repeatedly that he had no right to a deferred benefit when he clearly did. I accept that from the explanation given he would have been unable to understand whether NCA were entitled to withhold his pension or not. The IDR process should have resulted in a redetermination which applied the Regulations and explained the basis for the decision correctly. Instead Mr Y had to pursue a claim to the Ombudsman to achieve that result and will now suffer the inconvenience of further delay while NCA make a fresh decision.
24. Therefore, I uphold Mr Y's complaint and make an award intended to remedy the injustice.

### **Directions**

25. Within 28 days the NCA must:
- reconsider Mr Y's application for a deferred pension and provide an explanation of the decision; and
  - award Mr Y £500 for the distress and inconvenience he has suffered.

**Karen Johnston**

Deputy Pensions Ombudsman  
16 May 2018

## **Appendix**

### **The Police Pension Scheme Regulations 1987**

#### **B1 Policeman's ordinary pension**

(1) Subject to paragraphs (2), (3A), (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.

[Ed note: Para (2) below extends to England and Wales only.]

(2) Except in the circumstances mentioned in paragraph (3), this Regulation shall not apply to a regular policeman where-

(a) he is of the rank of superintendent or below, and he retires or retired without having given to the police pension authority a month's written notice of his intention to retire or such shorter notice as may have been accepted by the police pension authority ; or

(b) he is of a rank above superintendent, and he retires or retired without having given to the police pension authority three months' written notice of his intention to retire or such shorter notice as may have been accepted by the police pension authority .

[Ed note: Para (2) below extends to Scotland only.]

(2) Except in the circumstances mentioned in paragraph (3), this Regulation shall not apply to a regular policeman where-

(a) he is of the rank of superintendent or below, and he retires or has retired without having given to the police authority a month's written notice of his intention to retire or such shorter notice as may have been accepted by the police authority; or

(b) he is of a rank above superintendent, and he retires or has retired without having given to the police authority three months' written notice of his intention to retire or such shorter notice as may have been accepted by the police authority.

(3) The circumstances referred to in paragraph (2) are that-

[Ed note: In sub-para (a) below, the words "police pension authority" appear in place of the words "police authority" in relation to England and Wales only.]

(a) the police pension authority have decided that this Regulation should apply in his case, or

[Ed note: Sub-para (b) below extends to England and Wales only.]

(b) being a regular policeman who has been appointed for a fixed term under regulation 11 of the Police Regulations 2003, he retires or retired at the end of that appointment, or if such a term has been extended, at the expiry of the extension.

[Ed note: Sub-para (b) below extends to Scotland only.]

(b)being a regular policeman who has been appointed for a fixed term under regulation 7 of the Police Service of Scotland Regulations 2013 , he retires or has retired at the end of that appointment, or if such a term has been extended, at the expiry of the extension.

(c)he is or was required to retire on account of age, or on the ground that his retention in the force would not be in the general interests of efficiency, or as an alternative to dismissal, or

**B5 Policeman's deferred pension**

(1)This Regulation shall apply to a regular policeman who-

(a)is entitled to reckon at least 2 years' pensionable service, or

(b)though not so entitled, has service as a regular policeman which, disregarding breaks in service of not more than a month, is continuous and which, when aggregated with any period of other service or employment by reason of which he is entitled to reckon pensionable service, is at least 2 years.

(2)A regular policeman to whom this Regulation applies who ceases or has ceased to be such or who makes or has made an election under regulation G4(1) in circumstances-

(a)in which no transfer value under regulation F9 or F10 is payable in respect of him, and

(b)which do not entitle him to any award under any of the preceding provisions of this Part, shall, on so ceasing to be a regular policeman or, as the case may be, on making such an election , be entitled to a deferred pension as hereinafter provided.

(3)Where the unsecured portion of the ill-health pension of a regular policeman to whom this Regulation applies-

(a)is terminated under Regulation K1(4), or

(b)has been terminated on or after 1st April 1973 under Regulation 65(4) of the Regulations of 1973,

otherwise than on his rejoining his force he shall, as from the date of termination, be entitled to a deferred pension as hereinafter provided.

(4)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, or

[Ed note: In sub-para (b) below, the words "police pension authority" appear in place of the words "police authority" in relation to England and Wales only.]

(b)where he has relinquished his entitlement as mentioned in Regulation F4(3) or F5(3) (previous service reckonable on payment or at discretion of police pension authority ), by written notice to the police pension authority , in respect of any period after the giving of that notice or

(c)in respect of any period during which payments are due to be made on account of any pension to which he is entitled under regulation B1.

**B5A Early payment of deferred pension**

(1)Subject to paragraphs (2) and (3), a regular policeman who-

(a)has attained the age of 55 years;

(b)receives a compensation lump sum on voluntary retirement in accordance with a determination of the Secretary of State made under regulation 14A of the Police Regulations 2003; and

(b)is entitled to a deferred pension in accordance with regulation B5(4), payable upon his attaining the age of 60,

may elect for immediate payment of that pension.

(2)An election under paragraph (1) shall be made by giving written notice to the police pension authority at least one month before the date on which the officer concerned wishes such payment to commence.

(3)Unless paragraph (4) applies, payment of the pension shall be subject to an actuarial reduction calculated by the police pension authority in accordance with tables prepared by the Scheme actuary.

(4)This paragraph applies where-

(b)a sum or sums equal to the value of the actuarial reduction are paid into the police pension fund in accordance with paragraphs (5) to (7) in order to buy out the actuarial reduction.

(5)Should the regular policeman so elect by giving notice in writing, the police pension authority shall pay into the police pension fund the whole or any part of the compensation lump sum that would otherwise be payable to the regular policeman.

(6)If the whole of the compensation lump sum is insufficient to buy out the actuarial reduction, the police pension authority may, in its discretion, pay into the police pension fund the additional amount required to do so.

(7)If the police pension authority decides not to pay the additional amount required to buy out the actuarial reduction, the regular policeman may pay to the police pension authority a sum equal to that additional amount, which the police pension authority shall pay into the police pension fund.



**K4 Withdrawal of pension during service as a regular policeman**

(1) subject to paragraph (2), a police authority by whom a pension is payable under Part B of these Regulations or under Regulation E1 (adult dependent relative's special pension) may, in their discretion, withdraw the whole or part of the pension for any period during which the pensioner is serving as a regular policeman in any police force and, where they have done so, they shall be discharged from all actual or contingent liability in respect of the pension or the part thereof withdrawn for the period in question.