

Ombudsman's Determination

Applicant	Mr N
Scheme	Firefighters' Pensions Scheme (FPS)
Respondents	Kent and Medway Fire and Rescue Authority (KMFA) Kent County Council (KCC)

Outcome

1. Mr N's complaint against KMFA is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) KMFA should pay Mr N £500 for significant distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained about the length of time taken to identify and notify him of an overpayment of injury pension and regarding the information provided in connection with the overpayment claim, which he considers to be insufficient and confusing. Mr N also considers the payslips provided in connection with his injury pension to be confusing and open to abuse.

Background information, including submissions from the parties

Background

4. The sequence of events is not in dispute, so I have only set out the key points in my Opinion. I acknowledge there were other exchanges of information between the parties.
5. Mr N retired on health grounds in 1988. He is also in receipt of an injury pension. Mr N was also in receipt of certain state benefits paid by the Department for Work and Pensions (**DWP**).
6. On 15 January 2014, KCC wrote to Mr N informing him that it had received confirmation, from the DWP, that his Incapacity Benefit had ceased with effect from 10 July 2013 and his claim for Employment Support Allowance (**ESA**) had been disallowed. KCC confirmed that Mr N's injury pension would have to be reassessed. It said his injury pension would increase to £1,264.48 per month (gross) from 10 July

2013 and the adjustment would be made in February 2014. It enclosed a calculation of Mr N's injury pension.

7. KCC also said all injury pensions were being reviewed from April 2010. It explained that the review had been prompted by changes to the way in which DWP benefits and injury pensions were increased each year. Until 2008, DWP benefits had been increased at the same rate as injury pensions and, as a result, there was no need for a review. In 2009, some DWP benefits were increased by more than the injury pensions and, in 2010, DWP benefits were increased but injury pensions were not.
8. KCC said the 2010 review had identified an overpayment of Mr N's injury pension dating from April 1994. It said this had occurred because the incorrect amount of Industrial Injury Disablement Benefit (**IIDB**) had been deducted from his injury pension. KCC said KMFA was not seeking to reclaim the overpayment back to 1994, but would seek to recover the overpayment from 12 April 2010. Mr N says the agreement not to seek recovery back to 1994 had, in fact, been reached in 2002.
9. KCC said the overpayment since 2010 amounted to £9,361.36. KCC also said Mr N had been underpaid for the period 10 July 2013 to 31 January 2014 by £2,389.75. It said this amount had been offset against the overpayment so that £6,971.61 remained to be recovered. KCC said it proposed to recover this amount in 36 monthly instalments starting in February 2014. Mr N was asked to contact KMFA if this would cause him severe financial hardship.
10. On 10 February 2014, in response to a query from Mr N, KCC sent him a bundle of documents relating to the calculation of the overpayment. This included: the calculation of his basic injury award, a summary of monthly payments since October 2006, letters from Jobcentre Plus relating to his DWP benefits, and a copy of the spreadsheet used to calculate the overpayment. KCC said it had only supplied documents relevant to the calculation of the overpayment. It said Mr N had the right to see all of the information held on file for him, subject to payment of a fee of £10. It enclosed a copy of its data subject access request procedure.
11. On 2 June 2014, Mr N wrote to KMFA saying he wished to appeal. He subsequently met with KMFA in June 2014. Following further correspondence, KMFA wrote to Mr N, on 19 August 2015, apologising for the delay in responding to his June 2014 letter. It said it had obtained copies of case documents from KCC and asked Mr N if he had taken up the option to see the information held by KCC; as explained to him by KCC in February 2014.
12. Mr N asked to have his case considered under the Scheme's internal dispute resolution (**IDR**) procedure. KMFA issued a stage one decision on 10 November 2015. It identified Mr N's complaint as:-
 - He disputed the calculations of the overpayment and underpayment of his injury pension.

- He had not been provided with sufficient information relating to the overpayment and underpayment of his injury pension.
 - It had taken an inappropriate length of time to identify the correct payments.
13. KMFA said the overpayment had been identified as a result of a directive from the Department of Communities and Local Government (**DCLG**) to check injury pensions. It said KCC had provided Mr N with the necessary information and methodology for calculating the overpayment and underpayment. It also said KCC and Mr N had confirmed that he had viewed his file at KCC. With regard to the time taken, KMFA said this was a reflection of the administrative demands of undertaking the review of all injury awards.
14. On 16 March 2016, Mr N appealed further. The key elements of Mr N's appeal submission are summarised below:-
- Despite asking for clarification, no-one had explained exactly what constituted the overpayment. He had been provided with figures but no explanation.
 - No account had been taken of the fact that the first payment in each year was usually less. Although this was a small amount, it made the calculations incorrect.
 - There was reference to an additional component but neither his IIDB or his Reduced Earnings Allowance (**REA**) had an additional component.
 - The only additional component for which he could find a record related to Invalidity Benefit from 29 June 1994. His Incapacity Benefit was reduced from 2 August 1995 when the additional component was removed because of his wife's earnings.
 - There was evidence that the reduction to his IIDB had been reclaimed.
 - Correspondence from 1989 showed that overpayments from 1988/89 had been repaid. This was evidence that KCC knew of his state benefits before 1999.
 - He did not agree with the methodology for calculating the increases to his injury pension. In particular, he did not agree that his state benefits should be deducted from his injury pension before the application of pensions increase.
 - The underpayment of £2,390.16 had been retained and a deduction of £193.66 had been taken from his pension in February 2014. He had not given his agreement to either.
 - Repayment of the overpayment in 39 [*sic*] months would cause him considerable hardship. He asked KMFA to consider a reduction to the amount owed.

15. Mr N's case was referred to an appeals panel in August 2016. KMFA provided a paper to the appeals panel. This explained that the IIDB being deducted from Mr N's injury pension had been £7.60 per week, when it should have been £12.90 from April 1994. The lower figure was the result of recoupment of an injury gratuity. KMFA also said that the amount of Incapacity Benefit deducted from Mr N's injury pension had not included an additional component because of uncertainty as to its effective date. It provided a breakdown of the overpayment calculation (see appendix).
16. KMFA issued a stage two IDR decision on 11 August 2016. It did not uphold Mr N's appeal. It said the appeals panel had some concerns about the circumstances which led to the overpayment. It said the panel felt that, because this was public money, KMFA had no option but to seek reimbursement. It did, however, agree that Mr N should be allowed to repay the amount due over 72 months.
17. Mr N subsequently applied to the Ombudsman. A formal response was requested from both KMFA and KCC on 12 June 2017. A joint response was received on 14 July 2017.
18. The relevant rules are found in the Firemen's Pension Scheme Order 1992 (SI1992/129) (as amended) (**1992 Order**) and the Firefighters' Compensation Scheme (England) Order 2006 (SI2006/1811) (as amended) (**2006 Order**).

Mr N's position

19. Mr N's submission is summarised below:-
 - He accepts that he has received more pension than he was due over an extended period of time.
 - It is the process and the period of time which particularly concerns him. It has taken KMFA and KCC years to conclude that an overpayment has occurred. The overpayment was originally discovered before 2010 but it was not followed up. This amounts to maladministration.
 - Despite the fact that KMFA and KCC have confirmed that the overpayment occurred through no fault of his, he is faced with having to find a considerable sum of money to repay it.
 - This is not the first occasion on which errors have occurred. The associated long drawn out negotiations are detrimental to his health and wellbeing.
 - KMFA and KCC appear to expect each member to report their annual percentage increase from the DWP; rather than make a single enquiry once a year for all members. This is despite asking his permission to do so.
 - Throughout the appeal process, KMFA and KCC repeatedly breached their own protocols and timetables. He found some of the correspondence insulting; particularly, suggestions that he had tried to mislead KMFA and KCC.

- KMFA and KCC commenced recovery of the overpayment without his agreement.
- He considers the payslips provided by KMFA's payroll providers to be confusing. He suggests they could be simplified so that it would be easier to understand what was being paid. He has provided an example of a simplified payslip.
- His desired outcome is to have some kind of guarantee that this will not happen again and an explanation of where the overpayment occurred. He would also like some recompense for the time and effort he has put into trying to deal with the matter and the stress it has caused.
- He cannot point to any exceptional purchases made as a consequence of receiving the higher amount of injury benefit. He has explained that he would have spent within his means, assuming additional injury pension to be his. He did take out a mortgage to build a house in France in 2005 and started building work in 2008. He also says that, at the time, both of his daughters were in further education.
- Paying back the money will cause personal hardship and increased stress. However, the money was not his paramount concern. It is the associated turmoil which it continues to hold over him because there is no assurance that the same problem could occur in the future.
- His hope was that KMFA and KCC would be held to task to ensure that these mistakes should never be allowed to happen in the future. This would give him some sort of peace of mind as he grows older.

KMFA and KCC position

20. A joint submission has been received on behalf of KMFA and KCC. It is summarised below:-

- Mr N has been in receipt of an injury pension since 1988.
- Where the recipient of an injury pension is also in receipt of industrial injury state benefits, the injury pension will be reduced accordingly. The relevant provisions were incorporated in the 1992 Order under rule B4. The provision was subsequently incorporated in the Firefighters' Compensation Scheme Regulations 2006 under Part 1 of Schedule 1. This provision cross references to the Social Security Act 1975.
- The process of identifying the overpayment was initiated by a Government directive to review injury pensions. This was contained in DCLG Circular 2/2010.

- KCC wrote to Mr N, on 15 January and 10 February 2014, setting out the methodology by which the overpayment had been calculated. Mr N was also sent copies of relevant documents on request. He was also told how to access the personal file held by KCC.
- At both stages of the IDR process, KMFA determined that an overpayment had occurred and had been correctly calculated. The need to recover the overpayment was correctly founded upon statutory requirements.

Adjudicator's Opinion

21. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by KMFA. The Adjudicator's findings are summarised below:-

- Under rule B4 and Part V Schedule 2 of the 1992 Order and rule 3 Part 2 Schedule 1 of the 2006 Order, Mr N's injury pension must be reduced by:
 - “(a) so much of any disablement pension under section 57 of the Social Security Act 1975 (“**the 1975 Act**”) as relates to the qualifying injury, together with any relevant increase,
 - (b) so much of any reduced earnings allowance under section 59A of the 1975 Act as relates to the qualifying injury, and
 - (c) until the material date, any benefit mentioned in sub-paragraph (3), together with any relevant increase.”
- The Adjudicator acknowledged that Mr N had been told that he had been overpaid his injury pension since 1994. However, KMFA was only seeking to recover the overpayment which it said arose since 12 April 2010. She, therefore, confined her investigation of the overpayment aspect of Mr N's complaint to the period after 12 April 2010.
- Between 12 April 2010 and 9 July 2013, Mr N had been paid more injury pension than he was due to receive. The overpayment amounted to £9,361.37 (see appendix). Between 10 July 2013 and 31 January 2014, Mr N had been paid less injury pension than he was due to receive. The underpayment amounted to £2,389.93 (see appendix). The net result was an overpayment of £6,971.44.
- The starting point in any case of overpayment was that monies paid in error may be recovered; regardless of which party was responsible for the error. There were, however, various considerations which must be taken into account in determining the extent to which recovery may be allowed.

- KMFA was seeking to recover the overpayment from Mr N by making deductions through his future injury pension payments. KMFA was, therefore, seeking to remedy the overpayment by way of recoupment. In the recent case of *Burgess & Ors v BIC UK Limited* [2018] EWHC 785 (Ch), Mr Justice Arnold had held that equitable recoupment was not a restitutionary claim for unjust enrichment (unlike the case of *Webber v Department for Education* [2016] EWHC 2519 (Ch)). Rather, it was an equitable self-help remedy which did not involve any claim for repayment of the monies paid in the past but an adjustment of accounts in the future. As such, equitable recoupment, as in the present case, was not subject to a six-year limitation period under section 5 of the Limitation Act 1980.
- Mr N had confirmed that he accepted that he had been overpaid and expected to have to repay the overpayment. However, there were circumstances in which the recipient of monies paid in error could not be required to repay some or all of the overpayment. These were referred to as defences against recovery.
- The most common defence against recovery of an overpayment was referred to as “change of position”; that is, the recipient had changed his position such that it would be unjust to require him to repay the overpayment either in whole or in part. The question was whether the injustice to the recipient in requiring him to repay the overpayment outweighed the injustice in denying restitution to the party which had made the payment.
- For a change of position defence to succeed, certain conditions had to be satisfied. Broadly, the recipient had to be able to show, on the balance of probabilities, that:-
 - He had received the overpayment in good faith. In other words, he was not or could not, on reasonable enquiry, have been aware of the overpayment. The recipient could not turn a blind eye if there was anything which suggests an error had occurred.
 - Because of the overpayment, he had detrimentally changed his position. The most obvious example of a detrimental change of position was the expenditure of money by the recipient.
 - The money had been spent on something he would not otherwise have bought and the expenditure was irreversible. Normal living expenses would not usually be considered, but funding a higher standard of living could be. As a general rule, paying off a debt would not count as a detrimental change of circumstances because the debt would have to be repaid anyway.

- The recipient of monies paid in error could be expected to mitigate the situation. For example, where an item purchased had a resale value, such as a car, the recipient would not benefit from the change of position defence against recovery to the extent of the resale value. In other words, whilst it would be up to the recipient to decide whether or not to actually sell the car, he could be required to repay the overpayment to the extent of the resale value.
- If all the above conditions were satisfied the Ombudsman might direct that the recipient should not be required to repay some or all of the overpayment.
- In the Adjudicator's view, the nature of the error was not something which would have been obvious to Mr N, nor was there anything to prompt him make enquiries. In other words, he had received the payments in good faith.
- Mr N had said that he was unable to point to any exceptional purchases made as a consequence of the overpayment. The Adjudicator acknowledged that this was more likely to be the case when the overpayment was made in the form of a lump sum. In Mr N's case, the overpayment was a monthly amount and was likely to have been absorbed into Mr N's normal living expenses. On average, for the period 12 April 2010 to 9 July 2013, Mr N had been overpaid by approximately £240 each month ($£9,361.37 \div 39$ months).
- Mr N had explained that he spent the money he was paid. On that basis, the Adjudicator thought it would be reasonable to say that the overpayment had enabled Mr N to live a slightly improved lifestyle.
- The Adjudicator noted that Mr N had taken out a mortgage in 2005 in order to build a house in France. Repayment of a debt, such as a mortgage, did not count as a detrimental change of circumstances. This was on the basis that the debt would have to be repaid in any event. However, if Mr N would not have taken out the mortgage but for the overpayment, there might be grounds for finding detrimental change. Having said this, property had a resale value and Mr N would only be able to claim detrimental change to the extent that his costs exceeded the value he could achieve on sale of the property. It would, of course, be up to Mr N to decide whether or not he actually sold the house.
- Finally, there was the question of whether it would be unjust to require Mr N to repay the overpayment. This was a matter of balancing the injustice to Mr N in asking him to repay the £6,971.44 against the injustice to the Scheme in not recovering this amount. The legal benchmark is that it would usually be considered unconscionable for monies paid in error to be kept and rarely unconscionable to request repayment. Mr N had made it clear that he expected to repay the overpayment and KMFA had agreed to recoup over 72 months (approximately £96 per month). Mr N had not said that the revised timetable would cause him undue hardship. On this basis, the Adjudicator

thought it would be difficult to say that it would be unreasonable to ask Mr N to repay the overpayment.

- There were other defences to the recovery of an overpayment; for example, estoppel and contract. These arise less often in pension cases but would be considered if the circumstances of the case suggested that this was appropriate.
- The most common estoppel defence in overpayment cases was estoppel by representation. In order for this to succeed, there must have been an unambiguous representation on which the recipient had relied. In Mr N's case, he would have to be able to show that KMFA and/or KCC had made an unambiguous representation to him that he was entitled to the higher injury pension. Mr N would then have to show that he had relied to his detriment on such a representation and that it was reasonable for him to have done so. In other words, he had taken some action he would not otherwise have done but for a representation that he was entitled to the higher pension.
- The Adjudicator said she had not been able to identify an unambiguous statement to the effect that Mr N was entitled to the higher injury pension. His injury benefit had been paid on the basis that certain state benefits would be deducted. The error was in the amount of the deduction, rather than in the deduction itself. In her view, an estoppel by representation defence was unlikely to succeed.
- There was also estoppel by convention when the parties had proceeded on the basis of an assumed state of facts or law. A party might then be prevented from going back on the assumption if it would be unjust (unconscionable) to allow it to do so. However, the courts had been quite strict in what they accepted as evidence of estoppel by convention. For example, the receipt of benefits, scheme booklets or payslips, or the payment of contributions had not, in and of themselves, been regarded as constituting more than mere passive acceptance¹. Nor had the receipt of memoranda, benefit calculations and supplemental transfer payments been considered enough to establish an estoppel by convention.
- In Mr N's case, he was aware that his injury pension would be reduced whilst he was in receipt of certain DWP benefits. The overpayment occurred because the amount of the reduction was incorrectly calculated; rather than as a result of an assumption that the benefits would not be taken into account. In

¹ *Redrow Plc v Pedley and another* [2002] EWHC 983 (Ch); *Steria Ltd and others v Hutchison and others* [2006] EWCA Civ 1551; *IMG Pension Plan HR Trustees Ltd v German and another* [2009] EWHC 2785 (Ch)

view of the above, it was the Adjudicator's opinion that an estoppel by convention defence would not succeed.

- The Adjudicator also said she had not identified the conditions required to establish a contract under which KMFA and/or KCC could be required to pay the higher injury pension. These were offer, acceptance, consideration, the intention to enter into legal relations and certainty of terms. In her view, there were no grounds to find that either KMFA or KCC had entered into a contract with Mr N to provide the higher pension.
- The Adjudicator also considered the question of non-financial injustice. She noted that it had previously been determined that, where there was maladministration in addition to the payment error, recompense for non-financial injustice might be appropriate. Mr N had made the point that the overpayment had accrued over a considerable period. The overpayment dated back to 1994; although KMFA was only seeking to recoup the amount paid from 2010. The Adjudicator accepted that KMFA had attempted to minimise the impact of recoupment on Mr N by extending the period over which this would occur. However, there was a considerable delay between Mr N first notifying KMFA that he wished to appeal (June 2014) and its IDR response (November 2015). The Adjudicator acknowledged that KMFA had been in touch with Mr N in the intervening period but this was a long time to leave matters unresolved. This was particularly so when dealing with someone who was not in good health. In her view, a payment for non-financial injustice in line with the Ombudsman's current guidelines was warranted.
- Mr N had also raised the matter of the information which had been provided for him; particularly by way of his payslips. The Adjudicator said she could understand Mr N's concern. It was not unreasonable for him to want to be able to clearly see what he was being paid and cross reference this to what he was expecting. This was particularly so when there had already been an error of this magnitude in his payments.
- Pensioners in receipt of benefits were not covered by the Employment Rights Act 1996 (as amended) because they were neither an employee nor a worker (as defined). The requirement to provide information for pensioners arose under the disclosure legislation. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI2013/2734) (as amended) applied. Regulation 20 set out what information had to be provided for a member where a pension had, or was about to, become payable. This information included the amount of the pension which was payable. Where the pension was being paid before normal retirement age, the information had to be provided within two months of that date.

- Thereafter, the information to be provided for members in receipt of benefits was provided for in regulation 22. This regulation required information to be provided when the amount of benefit payable to the person altered where the alteration was not made in accordance with the scheme's provisions which would allow the payments to be altered. The information had to be given before the date on which the decision to alter the benefit took effect, where possible and in any event within one month of that date.
- The disclosure legislation did not require schemes to provide pensioners with monthly payslips or specify that any payslips should provide a detailed breakdown of the payment.
- The Adjudicator said she could see why Mr N believed that more could be done to make the payslips provided by KMFA and KCC clearer. However, she did not consider that there were sufficient grounds for finding the lack of detail amounted to maladministration. She suggested that it might, however, be something that KMFA and KCC could consider reviewing for the future.
- To put matters right, the Adjudicator suggested that KMFA pay Mr N £500 for significant distress and inconvenience.

22. Mr N did not accept the Adjudicator's Opinion 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 Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

23. There are essentially two aspects to Mr N's complaint: the overpayment of his injury pension itself; and the manner in which his case has been dealt with.
24. With regard to the overpayment itself, Mr N accepts that he has received more pension than he was strictly entitled to under the 1992 and/or 2006 Orders. KMFA is seeking to recover the overpayment by way of recoupment. In the absence of any defence against recovery, it is entitled to do so.
25. The possible defences against recovery were considered in some detail by my Adjudicator. For the reasons outlined in her opinion as summarised above, I find that Mr N does not have a defence against recovery of the overpayment. I find that KMFA may recoup the amount due from future payments of Mr N's injury pension.
26. It would be appropriate, at this point, to consider Section 91(6) Pensions Act 1995. This broadly provides that if a member disputes the amount of the recoupment, then the trustees/scheme managers cannot recoup the overpaid pension unless they have an order from a competent court.

27. In the *Bic* case, it was suggested obiter dictum (an opinion or remark which is not binding) by Mr Justice Arnold that a Determination by me did not satisfy the requirements of section 91(6) Pensions Act 1995 because the Pensions Ombudsman is not a competent court. We were not a party to those proceedings and Mr Justice Arnold did not have the benefit of hearing full arguments on the issue. In any event, the comments by Mr Justice Arnold in the *Bic* appeal were judicial dicta; that is, remarks on a point not directly before the court or essential to its decision. I am not bound to follow them. It is my view, for the reasons explained below, that a Determination by me, to the effect that KMFA may recoup an amount, would satisfy the requirements of section 91(6) Pensions Act 1995. In particular the words:

“Where there is a dispute as to its amount [my emphasis], the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court.”

28. Because, following this Determination, there is no “dispute as to its amount”. The dispute is brought to an end further to section 151(3) Pension Schemes Act 1993 (subject to any appeal on a point of law).

29. Additionally, schedule 1, part 1, paragraph 35(e) of the Tribunals and Inquiries Act 1992 confirms that the Pensions Ombudsman is a tribunal in respect of its functions. *Peach Grey & Co. v Sommers* [1995] I.C.R. 549 confirms that a tribunal is an inferior court. Rule 52.1(c) of the Civil Procedure Rules states that a lower court includes the person from whose decision an appeal is brought (to the High Court), which includes the Pensions Ombudsman. Section 91(6) Pensions Act 1995 also includes arbitration awards. Tribunals, including the Pensions Ombudsman, therefore clearly fall within the definition of a competent court.

30. A distinction needs to be drawn between the recognition and enforcement of my determinations; as with judgments more generally. I have decided that KMFA is entitled to exercise its right of recoupment against Mr N. I am exercising my powers under section 151(2) Pension Schemes Act 1993 to direct KMFA to take such steps as specified in this determination. Therefore, subject to any appeal, my determination and direction[s] will be final and binding on the parties. This is made clear by section 151(3) Pension Schemes Act 1993. My determination must then be recognised by (amongst other things) the County Court. Although obiter dictum, Mr Justice Arnold suggested that the County Court would have the power to make a declaration duplicating a direction already made by me; section 151(3) Pension Schemes Act 1993 was not referred to by the judge. In my opinion, the County Court would not have the power to entertain the substance of a claim which was in essence *res judicata* (already decided by a court/tribunal).

31. By contrast, a Determination by me, may be enforced as if it were a judgment or order of the County Court: section 151(5)(a) Pension Schemes Act 1993. What this means is that enforcement orders such as charging orders, attachment of earnings orders and injunctions can be obtained following the determination in the same way

as they can be following a judgment of the County Court. In the case of the right to recoupment, it is difficult to see why enforcement measures would be necessary or relevant, given that recoupment is in essence a self-help remedy for trustees or scheme managers.

32. I move now to consider Mr N's concerns about the manner in which his case has been dealt with. Briefly, his main concerns are: the length of time taken to discover the overpayment and notify him; and the lack of information about his payments. On this latter point, Mr N is particularly concerned to prevent anything of this nature happening in the future.
33. With regard to the length of time taken to deal with the overpayment, I find that this does amount to maladministration on KMFA's part. The overpayment was discovered in 2010 but it was not until 2014 that any action was taken. Then, when Mr N appealed against the decision to recoup the overpayment, the dispute process was dragged out for over a year. This would be unacceptable in any case but it becomes even less acceptable when dealing with someone in poor health. I uphold this aspect of Mr N's complaint.
34. Mr N is concerned to prevent any repeat of this maladministration. I can understand why. However, my office is primarily concerned with putting right what has happened, rather than anticipating future events. In the absence of any legal requirement for KMFA or KCC to provide Mr N with payslips in a particular format, I do not have the grounds to make the kind of directions he is seeking. I would, however, encourage KMFA and KCC to take on board Mr N's concerns about the format of the payslips and consider ways to clarify the information provided.

Directions

35. Within 28 days of the date of this determination, KMFA shall pay Mr N £500 for the significant distress and inconvenience caused by its maladministration.

Anthony Arter

Pensions Ombudsman
9 November 2018

Appendix

Breakdown of overpayment

The following is based on figures taken from the paper presented to KMFA's appeals panel:-

Mr N's basic injury pension was £5,486.06 per year. Pensions increase is applied cumulatively in April each year:-

	Basic	Increase	Total	Rate of increase
12 April 2010	£5,486.06	£6,237.80	£11,723.86	
11 April 2011	£5,486.06	£6,601.24	£12,087.30	3.10%
9 April 2012	£5,486.06	£7,229.78	£12,715.84	5.20%
8 April 2013	£5,486.06	£7,509.53	£12,995.59	2.20%

Mr N's weekly state benefits over the period in question were:-

	IIDB	REA	IB	Total annual
12 April 2010	£29.16	£58.32	£128.88	£11,250.72
11 April 2011	£30.06	£60.12	£131.73	£11,539.32
9 April 2012	£31.62	£63.24	£136.63	£12,037.48
8 April 2013	£32.32	£64.64	£138.83	£12,261.08
10 July 2013	£32.32	£64.64	£0.00	£5,041.92

Mr N has provided details of the actual payments he received over the period in question, taken from his bank statements. I acknowledge that there are some differences in the figures. However, these are likely to be the result of converting weekly amounts into annual equivalents.

The excess injury pension after deduction should have been:-

12 April 2010	£11,723.86 – 11,250.72 = £473.14 p.a.
11 April 2011	£12,087.30 – 11,539.32 = £547.98 p.a.
9 April 2012	£12,715.84 – 12,037.48 = £678.36 p.a.
8 April 2013	£12,995.59 – 12,261.08 = £734.51 p.a.
10 July 2013	£12,995.59 – 5,041.92 = £7,953.67 p.a.

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Mr N was paid:-

12 April 2010	£3,319.56 p.a.
11 April 2011	£3,422.52 p.a.
9 April 2012	£3,600.48 p.a.
8 April 2013	£3,679.68 p.a.
10 July 2013	£3,679.38 p.a.

The overpayment

12 April 2010	$(£3,319.56 - 473.14) \times 11.9667/12 = £2,838.52$
11 April 2011	$(£3,422.52 - 547.98) \times 11.9333/12 = £2,858.56$
9 April 2012	$(£3,600.48 - £678.36) \times 11.9667/12 = £2,914.01$
8 April 2013	$£3,679.68 - 734.51 = £2,945.17 \times 3.057/12 = £750.28$

Total £9,361.37

The underpayment

$£7,953.67 - 3,679.38 = £4,274.29 \times 6.7097/12 = £2,389.93$

Net amount owed

$£9,361.37 - 2,389.93 = \mathbf{£6,971.44}$ (KMFA figure £6,971.61 – difference likely to be in rounding)

This does not take into account the amount recovered in February 2014.