

Ombudsman's Determination

Applicant	Dr Y
Scheme	NHS Superannuation Scheme (Scotland) (the Scheme)
Respondents	Scottish Public Pensions Agency (SPPA)

Outcome

1. Dr Y's complaint against SPPA is partly upheld. To put matters right, SPPA shall pay £1,000 to Dr Y in respect of the serious distress and inconvenience which he has suffered.

Complaint summary

2. Dr Y complained that SPPA provided him with incorrect information in relation to the Lifetime Allowance (**LTA**) and this led him to a decision to opt out of paying contributions to the Scheme. He said this decision was not in his best financial interest.
3. Dr Y asserted that SPPA should reinstate the contributions he missed as a result of his opt out from the Scheme, as well as the Added Years that were not purchased as a result of the opt out.
4. Dr Y also raised concerns about SPPA's provision of incorrect estimates of his pension benefits and its calculation of his entitlement, following his retirement.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.
6. Dr Y was a member of the Scheme from 1 August 1982 to 31 March 2019. There was a break in his contributions effective between April 2016 and September 2017.
7. On 8 January 2014, SPPA wrote to Dr Y to explain that from April 2014, the LTA would be reduced from £1.5 million to £1.25 million (**the January 2014 Letter**). The letter included the following statement:

“The purpose of this letter is to give you an early warning that, based on the information we currently hold, we consider that you may be affected by the reduced LTA.”

8. SPPA’s letter also explained that, for those individuals who had already accrued benefits in excess of £1.25 million, they may be able to apply for Fixed Protection (FP) 2014. This would protect their LTA at the higher level.
9. On 10 January 2014, Dr Y wrote to SPPA. He requested information about his Scheme contributions, the value of his benefits, and his LTA position.
10. On 28 February 2014, Dr Y wrote to SPPA to request a response to his letter, dated 10 January 2014, so that he could understand how close he was to exceeding the LTA. He would then be able to consider whether he should apply for FP 2014.
11. On 11 March 2014, SPPA sent Dr Y a pension statement. This gave an estimate of the benefits he had accrued in the Scheme up to 31 March 2013, which was a pension of £30,576.87 per year and a tax-free lump sum payment of £91,730.61. The statement recorded that there were no Added Years purchased. The estimate was based on the following service:-
 - Practitioner service of 5 years 267 days, from 1 April 2009 to 31 March 2013.
 - Initial Officer service of 18 years 309 days, from 1 August 1982 to 31 March 2009.
 - Concurrent Officer service of 3 years 103 days, from 1 April 2009 with no end date given.
12. SPPA explained that the value of these estimated benefits was £703,268.01, which would use 46.88% of the LTA of £1.5 million at that time. SPPA said that the figures provided were an estimate and based on information received from Dr Y’s employer(s). His actual benefits at retirement would depend on the relevant information to be confirmed at his retirement date.
13. On 8 July 2014, SPPA sent Dr Y a pension statement. This gave an estimate of the benefits he had accrued in the Scheme up to 31 March 2014, which was a pension of £31,869.72 per year and a tax-free lump sum payment of £95,609.17. The statement recorded that there were no Added Years purchased. The estimate was based on the following service:-
 - Practitioner service of 7 years 60 days, from 1 April 2009 to 31 March 2014.
 - Initial Officer service of 18 years 309 days, from 1 August 1982 to 31 March 2009.
 - Concurrent Officer service of 3 years 103 days, from 1 April 2009 with no end date given.

14. SPPA explained that the value of these estimated benefits was £733,003.57, which would use 58.64% of the LTA of £1.25 million at that time. SPPA said that the figures provided were an estimate and based on information received from Dr Y's employer(s). His actual benefits at retirement would depend on the relevant information, which was to be confirmed at his retirement date.
15. On 17 February 2016, SPPA wrote to Dr Y to explain that from April 2016, the LTA would be reduced from £1.25 million to £1 million (**the February 2016 Letter**). SPPA again set out that, based on the information it held about Dr Y's benefit entitlement from the Scheme, it considered that he may be affected by this change to the LTA. It explained that it may be possible to apply for FP 2016, if the value of the benefits already accrued was in excess of £1 million.
16. On 10 April 2016, Dr Y wrote to SPPA. He referred to the February 2016 Letter and explained that he had attempted to contact his employer to stop his contributions to the Scheme, because he had reached the LTA. He said his employer told him that it would first need authorisation from SPPA. Dr Y asked what action(s) he would need to take to stop his contributions.
17. On 18 April 2016, SPPA wrote to Dr Y. It explained that in order to opt out of the Scheme in relation to his Practitioner employment, Dr Y had to opt out of all of his Practitioner posts by completing an opt out form for each post. This was because his date of opt out had to be agreed with the relevant employer. SPPA added that Dr Y could continue to pay contributions on his Officer post. If he also wished to stop paying contributions for this post, then SPPA said he should follow the same opt out process as it had detailed for his Practitioner posts.
18. On 7 May 2017, Dr Y wrote to SPPA. He asked about the retirement process for the Scheme. He also requested the value of his benefits and tax-free lump sum.
19. On 14 June 2017, SPPA sent Dr Y a pension statement. This gave an estimate of the benefits he had accrued in the Scheme up to 31 March 2016, which was a pension of £27,577.72 per year and a tax-free lump sum payment of £82,701.95. The statement recorded that there were no Added Years purchased. The estimate was based on the following service:-
 - Practitioner service of 10 years 10 days, from 1 April 2009 to 31 March 2016.
 - Initial Officer service of 18 years 309 days, from 1 August 1982 to 31 March 2009.
 - Concurrent Officer service of 3 years 103 days, from 1 April 2009 with no end date given.
20. SPPA explained that the value of these estimated benefits was £634,256.35, which would use 63.43% of the LTA of £1 million at that time. SPPA said that the figures provided were an estimate and based on information received from Dr Y's employer(s). His actual benefits at retirement would depend on the relevant information to be confirmed at his retirement date.

21. On 6 August 2017, SPPA wrote to Dr Y. It explained that as a member of the 1995 section of the Scheme, he was able to claim full benefits from the age of 60, but if he did so, he would only receive a proportional credit of his Added Years. This was because his Added Years contract was due to end when he reached age 65. SPPA set out Dr Y's estimated entitlement at that time as being a pension of £27,577.72 per year and a tax-free lump sum of £82,701.95.
22. On 11 August 2017, Dr Y wrote to SPPA. He said he had been informed by SPPA that the value of his benefits in the Scheme was approaching the LTA. He set out his understanding that his LTA was £1.5 million, which represented an annual pension of around £60,000. He stopped his contributions to the Scheme to avoid breaching the LTA but had since learned that the value of his benefits was just £634,256.35. Dr Y said that he wished to re-start his contributions to the Scheme in order to build up further benefits. Dr Y also asserted that his Scheme record did not appear to show contributions from his employment with the Argyle and Clyde, Lanarkshire, and Forth Valley Health Boards (**NHS Forth Valley**).
23. On 7 September 2017, SPPA wrote to Dr Y. It said that the figures included in its correspondence dated 6 August 2017 were incorrect. It gave revised figures of an annual pension from the Scheme of £34,691.12 and a tax-free lump sum of £104,073.36. The total value of these benefits for testing against the LTA, which was £1 million at that time, was £797,895.76.
24. SPPA explained that according to its records, it had not received a completed opt out form from Dr Y, or some of his employers, although his service up to 31 March 2013 was accurately recorded. SPPA listed five employments, four Practitioner and one Officer, for Dr Y and asked him to confirm if he was still working in these posts, but had chosen to opt out, or if he had left. It said that if he had opted out, then he would need to inform his employer(s) if he wished to opt back in.
25. On 10 November 2017, SPPA received a letter from Dr Y. He set out that at that time, he was employed as a GP by NHS Forth Valley and as a Specialist GP in Accident and Emergency, also for NHS Forth Valley. He said that previously he worked for the Fife Health Board in the three different roles. He considered that his contributions to the Scheme, for all the positions to which he referred, would fall under the Practitioner category. He said that his decision to opt out was due to a misunderstanding about his LTA. He asked whether he was due to receive information about his benefits in the Scheme and/or his LTA position.
26. On 7 December 2017, SPPA wrote to Dr Y. It offered to discuss the points Dr Y had raised, in his correspondence dated 10 November 2017, as part of a telephone call. SPPA said it did not receive a response to this letter.
27. On 3 May 2018, SPPA received a letter from Dr Y, in which he asked for further information about the contributions he had made to the Scheme and the value of his benefits.

28. On 20 June 2018, SPPA wrote to Dr Y. SPPA explained that it had identified an issue with the information recorded for his employment by NHS Forth Valley. Although Dr Y had confirmed that both his posts were as a GP, since 24 September 2001, NHS Forth Valley had been submitting the annual returns for one of the two posts as Officer employment. SPPA said it had contacted NHS Forth Valley about this and it had since amended Dr Y's record to show that his employment was as a GP.
29. SPPA explained that this discrepancy had affected its calculation of Dr Y's Scheme benefits and meant that the previous estimates it provided had been incorrect. It apologised for the error and explained that it bases its estimates on the information it receives from NHS employers. It enclosed an estimate for the benefits Dr Y had accrued up to 31 March 2018. This did not include the employers' annual returns for 2017/2018, as they had yet to be submitted, but SPPA said the information would be included in future estimates. SPPA estimated the value of Dr Y's pension entitlement to be £30,252.58 per year, plus a tax-free lump sum of £90,757.76, which represented a total benefit value of £695,809.36.
30. On 4 July 2018, SPPA received a letter from Dr Y. He referred to SPPA's letter dated 7 September 2017. He said he was previously misled about the value of his Scheme benefits and how close he had been to exceeding his LTA. He said he had lost out on some contributions to the Scheme as a result.
31. In September 2018, Dr Y wrote to SPPA to request further information about his benefits in the Scheme. He said he used to receive a regular 'pension reckoner', but that correspondence appeared to have stopped.
32. On 26 September 2018, SPPA wrote to Dr Y with an estimate of his benefits in the Scheme. It said the estimate was based on his service to 31 March 2018, as well as earnings and pattern of service information provided by his employers. It confirmed that exact figures for Dr Y's benefits could not be given until his final earnings and service details were known, and an application for retirement had been made in line with the Scheme's Regulations. SPPA set out that Dr Y's estimated annual pension entitlement was £35,109.34, with a tax-free lump sum of £105,328.03. This gave a total benefit value of £807,514.83 for testing against the LTA.
33. On 23 January 2019, Dr Y wrote to SPPA. He asked if the pension estimate SPPA provided in its correspondence of 26 September 2018 had taken into account his Added Years contributions. He also asked about what he termed his 'missing' contributions in 2016 and 2017, when he had opted out of the Scheme.
34. On 4 February 2019, SPPA wrote to Dr Y. It confirmed that the Added Years had been included in the estimate of his benefits to 31 March 2018. It explained that there were no contributions for his service between 1 April 2016 and 18 September 2017, because he had opted out of the Scheme during this period.
35. On 29 March 2019, SPPA received Dr Y's application for retirement from the Scheme. His chosen retirement date was 31 March 2019.

36. On 10 April 2019, SPPA sent Dr Y the awarding documents for his pension from the Scheme. It confirmed that Dr Y's annual pension would be £25,103.48, with a start date of 1 April 2019, and he would receive a tax-free lump sum of £167,335.44. The final value of Dr Y's Scheme benefits, for testing against the LTA, was £669,405.04.
37. On 3 May 2019, SPPA made a payment of £177,199.43 to Dr Y.
38. On 8 May 2019, SPPA wrote to Dr Y to explain that it had made an incorrect payment for his tax-free lump sum from the Scheme. The correct amount was £167,335.44. SPPA enclosed an invoice which detailed the overpaid sum of £9,863.99 and requested that Dr Y repay this as soon as possible.
39. On 31 July 2019, SPPA wrote to Dr Y. It confirmed that at Dr Y's retirement date of 1 April 2019, the total value of his Scheme benefits was £669,405.04. It explained that this figure was calculated as 20 times Dr Y's annual pension of £25,103.48, plus his lump sum amount of £167,335.44.
40. SPPA said that one of Dr Y's employers had incorrectly reported that his employment was Officer service, rather than Practitioner service. It said his record was amended in June 2018, so the pension estimates and information in relation to the LTA which it provided prior to this, were based on incorrect information. SPPA apologised for this error. It explained that when Dr Y opted out of the Scheme, his Added Years contributions also stopped. If the period of opt out is greater than a year, then it is not possible to restart an Added Years contract and it ceases at the date of opt out. This is in accordance with the Scheme's Regulations; the relevant extract of the Regulations is included in the Appendix.
41. On 20 November 2019, Dr Y wrote to SPPA to register a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that he had paused his contributions to the Scheme, because he was led to believe by SPPA that he was approaching the LTA and he did not want to incur a tax penalty. He subsequently learned that the value of his benefits was unlikely to breach the LTA, so he opted back into the Scheme. However, he said that if he had been aware of his true LTA position from the outset, he would not have opted out. He asserted that he had missed potential contributions to the Scheme during this time.
42. On 22 November 2019, SPPA received a payment of £9,863.99 from Dr Y, which was the amount that had been overpaid for his tax-free lump sum.
43. On 17 August 2020, SPPA responded to Dr Y's complaint, which it said it received on 25 November 2019. It explained that it had to assess the complaint in line with the Scheme's Regulations. It acknowledged that there had been errors in the maintenance of Dr Y's Scheme record but said this was due to incorrect information supplied by NHS Forth Valley. SPPA asserted that it took appropriate action when the discrepancy was identified.

44. SPPA said that the correspondence it sent regarding changes to the LTA was intended to highlight this information to members that might be affected. SPPA considered that it did not state that Dr Y was known to have exceeded, or was likely to exceed, the LTA. Further, it did not direct Dr Y to take specific action, for example, opting out of the Scheme. SPPA said that Dr Y's overall LTA position would also have depended on any other benefits he held outside the Scheme. Its position was that it was not responsible for Dr Y's decision to opt out of the Scheme in April 2016.
45. SPPA noted that when Dr Y opted out of the Scheme, he did not appear to have been sent a statement of deferred benefits, as was required under legislation. SPPA said it did not consider that it could be held to account for this, because it was not provided with an opt out form, or confirmation of the opt out by Dr Y's employer(s). It added that even if a statement of deferred benefits had been issued, although it is routinely provided, there was no legal requirement for it to include an indication of the LTA used by his benefits in the Scheme.
46. SPPA explained that if a member opts out of the Scheme and does not return within a year, the benefits earned in that earlier period of service, including Added Years, become a preserved pension. It found no evidence that this was highlighted to Dr Y when his Added Years contract commenced in 2008. However, SPPA's position was that the provision of this information would not have affected Dr Y's decision to opt out of the Scheme. This was because his decision was based on his interpretation of the LTA information included in the February 2016 Letter.

Dr Y's position

47. SPPA's letters implied that the value of his benefits was approaching the LTA. He based his decision to opt out of contributions to the Scheme on this information but was subsequently informed that his Scheme benefits were well within the LTA. He would not have opted out had he been given this information from the outset.
48. SPPA has acknowledged that it mismanaged his record for the Scheme. He is unclear about what corrective action has been taken by SPPA since it identified the errors in the information submitted by NHS Forth Valley.
49. SPPA said it was unfortunate that the error with his record was not investigated in April 2016. Its failure to do so verges on corporate malfeasance and incompetence.
50. SPPA has not addressed the loss of his Added Years entitlement. This was put in place so that he would receive a full pension at retirement, even though there were periods of his membership of the Scheme for which he did not make contributions.

SPPA's position

51. Dr Y's Scheme opt out form from April 2016 is not on record, but it received an electronic leaver notification from Dr Y's employer, confirming his last day of service as 31 March 2016. This is how it would have been made aware of Dr Y's opt out from the Scheme.

52. NHS Forth Valley incorrectly reported Dr Y's employment as an Officer post, rather than a Practitioner. This employment ran from 24 September 2001 to 31 March 2013. It was only confirmed as a Practitioner post in June 2018.
53. An NHS employer is responsible for submitting the member's starter form and this includes a code which indicates whether the role is an Officer or Practitioner post. In Dr Y's case, the Officer and Practitioner posts had different salaries, so affected the calculation of his benefit entitlement.
54. While all Dr Y's pensionable posts, apart from NHS Forth Valley, were recorded as a Practitioner, it was not standard practice for it to have queried whether the submission from NHS Forth Valley was correct. It is often the case that Practitioner members will also have some Officer contracts.
55. If NHS Forth Valley had provided correct information at the outset, the pension estimate issued to Dr Y on 11 March 2014 would have quoted a potential annual pension of £20,519.16. Similarly, the estimate issued to Dr Y on 8 July 2014 would have quoted a potential annual pension of £22,056.66. This would have meant that Dr Y's LTA used by his estimated benefits would have been below the threshold required to trigger the issue of the January 2014 Letter and the February 2016 Letter.
56. The pension figures provided in its correspondence dated 6 August 2017, also included in the pension statement sent to Dr Y on 14 June 2017, were incorrect because the estimate generated by its system was based on Dr Y having an Officer salary of £27,046.35. When the revised benefit statement was issued, this Officer Salary had been corrected to £91,832.34. The figure would have been based on the employment that was erroneously recorded as an Officer position.
57. The pension estimate, provided to Dr Y on 20 June 2018, was calculated before it had Dr Y's confirmed Practitioner earnings for the year ending 31 March 2018. The estimate issued on 26 September 2018, included the Practitioner earnings of £69,936.89 for this period, so the benefit value and total pension were higher. There was also a mistake in this estimate in that the Added Years contract was kept open when it should have stopped on 31 March 2016.
58. When Dr Y came to claim his benefits, he chose to commute some of his pension to increase his tax-free lump sum amount. It has submitted details of the calculation of Dr Y's final benefit entitlement, which shows that he gave up a pension amount of £6,135 per year to obtain an additional lump sum amount of £73,620. This had the effect of reducing the total benefit value from £718,485.04 to £669,405.04. The final benefit calculation included the Added Years bought by Dr Y.
59. The overpayment of Dr Y's tax-free lump sum occurred because there was a manual adjustment required on its system, which was not carried out in time for the payment made to Dr Y on 3 May 2019.

Adjudicator's Opinion

60. Dr Y's complaint was considered by one of our Adjudicators, who concluded that there was maladministration by SPPA, but Dr Y had not suffered a financial loss. The Adjudicator's findings are summarised below:-

- To undertake a full assessment of his LTA position, Dr Y would need to have known the value of his benefits in the Scheme and the value of any benefits he held elsewhere.
- SPPA received incorrect information from NHS Forth Valley in relation to Dr Y's employment status. This meant that SPPA overestimated the value of Dr Y's benefits in the Scheme. It also meant that Dr Y was sent the January 2014 Letter and the February 2016 Letter, which highlighted the changes to be made to the LTA. The Adjudicator's view was that SPPA should not be held responsible for the incorrect information that was provided by NHS Forth Valley.
- On 8 July 2014, SPPA sent Dr Y a pension statement which gave an estimate of £733,003.57 for the total value of his benefits, representing 58.64% of the LTA of £1.25 million at that time. This was the last estimate issued to Dr Y before he made the decision to opt out of the Scheme. The Adjudicator's view was that there was not a clear link between the estimate Dr Y had received and his decision to opt out of the Scheme. His letter, dated 10 April 2016, referenced the February 2016 Letter and set out his intention to stop his contributions to the Scheme.
- The January 2014 Letter and the February 2016 Letter did not include any information that was incorrect. The letters indicated that Dr Y might be affected by the reduced LTA but did not say that he would be affected. Further, SPPA did not instruct Dr Y to take any specific action in response to the LTA changes. The Adjudicator's view was that SPPA's actions did not amount to maladministration.
- Although SPPA should have provided Dr Y with a statement of deferred benefits, following his opt out from the Scheme, the Adjudicator's view was that it was not possible to conclude that receipt of this statement would have altered Dr Y's decision to opt out of the Scheme.
- Dr Y is not entitled to any higher level of benefit, quoted in the incorrect estimates he received, and should only receive the benefit level to which he is entitled according to the Scheme's Regulations. There was no evidence that Dr Y's pension entitlement at retirement had been incorrectly calculated by SPPA.
- SPPA's failure to account for the end of Dr Y's Added Years contract, as part of the incorrect estimate it issued on 26 September 2018, amounted to maladministration.

- SPPA's overpayment of Dr Y's lump sum at retirement, and the approximately nine-month period it took to issue its complaint response under the Scheme's IDRPs, also amounted to maladministration.
- SPPA should pay Dr Y £500 in recognition of the significant distress and inconvenience he had suffered.

61. Dr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. He has provided further comments in response to the Opinion, which are summarised as follows:-

- From the 1980s to the early 2000s, he regularly received information about his Scheme benefits, but this was stopped. He was aware that he had gaps in his Scheme membership, so decided to take up an Added Years contract. He was under the impression that this would lead to him receiving a pension based on 40 years' worth of contributions to the Scheme.
- He subsequently decided to opt out from the Scheme, because he was concerned that he was going to exceed the LTA. This concern was based on information provided to him by SPPA, which he later discovered was incorrect.
- He realised that he needed to opt back into the Scheme, and begin contributing, in order to reach his desired level of pension benefits. However, his prior opt out of the Scheme had meant that his Added Years contract was stopped.
- After he restarted his contributions, he received further incorrect information from SPPA about the value of his benefits. He based his decision to retire on this information. When his final pension was calculated, it was significantly lower than had been estimated. The information provided by SPPA was poorly set out and confusing.
- The error was blamed on a third party, NHS Forth Valley, that seemingly had made a mistake with his employment status. SPPA was responsible for calculating his pension, so he does not consider the actions of NHS Forth Valley to be relevant to his complaint. If SPPA did not have all the information to correctly assess his pension entitlement, then it should not have provided incorrect information, given that this was crucial to his decision regarding his retirement.
- SPPA overpaid his lump sum at retirement. This was its error, but the letter he received about repayment threatened the possibility of court action, which he found intimidating.

62. I have considered Dr Y's comments, but they do not change the outcome of the complaint except in respect of the award for maladministration. Otherwise, I agree with the Adjudicator's Opinion.

Ombudsman's decision

63. Dr Y considers that SPPA was responsible for the incorrect pension estimates that he received. SPPA explained that NHS Forth Valley had been incorrectly recording his employment as Officer status and this was the cause of the incorrect estimates at that time. SPPA informed Dr Y, in its letter dated 20 June 2018, that it had identified the error and sought to correct it. I find that SPPA was not responsible for the incorrect estimates that Dr Y received prior to the identification of this error. In addition, I find it is not reasonable to expect that SPPA should have known that the information submitted by NHS Forth Valley was incorrect. SPPA is reliant on NHS employers, such as NHS Forth Valley, to submit accurate member information for it to calculate members' pension entitlement.
64. Dr Y opted out of the Scheme in April 2016. His letter to SPPA, dated 10 April 2016, indicated that this decision was based on information contained within the February 2016 Letter. Although the February 2016 Letter suggested that Dr Y may have been close to the LTA, I find that it did not provide any incorrect information. The letter did not say that Dr Y was close to, or in excess of, the LTA, nor did it recommend he take any specific action. Ultimately, it was Dr Y's responsibility to establish his LTA position, which would have included consideration of the value of his Scheme benefits, as well as any benefits he held in other pension schemes. I do not find that SPPA should be held responsible for the financial consequences of Dr Y's decision to opt out of the Scheme.
65. Dr Y has raised a concern about the ending of his Added Years contract. While it is unfortunate that this was a result of his decision to opt out of the Scheme, I find that SPPA acted in accordance with the Scheme Regulations. Dr Y would need to have re-started his contributions to the Scheme within 12 months of the opt out to have continued the Added Years contract.
66. However, I note that once SPPA had identified the error in Dr Y's employment status, it issued him with a further pension estimate, dated 26 September 2018, that was incorrect. SPPA explained that the reason for this was that Dr Y's Added Years contract initially was not stopped when he opted out of the Scheme in 2016. I find that this amounted to maladministration by SPPA.
67. Dr Y has asserted that he based his decision to retire on the incorrect estimate that he received, dated 26 September 2018. This quoted the total value of Dr Y's benefits as being £807,514.83. I acknowledge that this figure was inaccurate, but note that on 20 June 2018, SPPA wrote to Dr Y to explain that it had identified the error in the record of his employment status and provide an updated estimate of his benefits. This quoted a benefit value of £695,809.36, which was broadly in line with Dr Y's final benefit value at retirement of £718,485.04, prior to his decision to commute some of his pension to increase his lump sum payment. The more accurate estimate was issued approximately three months before the incorrect estimate, so the discrepancy should have been apparent and could have been queried. I find that it was not reasonable for Dr Y to have relied on the incorrect estimate without challenging it.

68. SPPA overpaid Dr Y's lump sum at retirement by an amount of £9,863.99. I find that this was again maladministration by SPPA. In addition, I find that the time taken by SPPA, of approximately nine months, to issue its complaint response to Dr Y was unreasonable and amounted to further maladministration.
69. I find that Dr Y has suffered serious distress and inconvenience because there have been several instances of maladministration by SPPA (set out in paragraphs 66 to 68 above). I find that an award of £1,000 is appropriate recognition of the distress and inconvenience Dr Y has suffered.
70. Dr Y's complaint is upheld in part.

Directions

71. Within 28 days of the date of this Determination, SPPA shall pay £1,000 to Dr Y.

Anthony Arter CBE

Deputy Pensions Ombudsman
20 December 2023

Appendix

“The NHS Superannuation Scheme (Scotland) Regulations 2011

Part Q - Right to Buy Additional Service, Unreduced Lump Sum and Additional Pension

Q9 Effect of member being absent or leaving and rejoining this Section of the scheme during the contribution option period

(1) This paragraph applies if during the contribution option period a member who has exercised the option under regulation Q8—

(a) is absent from work for any of the reasons described in regulation P1(2) (maternity, paternity and adoption absence); or

(b) is on a leave of absence in accordance with regulation P2 (absence because of illness or injury).

(2) If paragraph (1) applies—

(a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation D1; and

(b) where the member does so cease, the member may continue to make contributions in accordance with the option if the member resumes making contributions under regulation D1 before the end of the period of 12 months beginning with the day on which the member first ceased to pay those contributions.

(3) This paragraph applies if a member—

(a) exercises the option under regulation Q8;

(b) leaves pensionable employment during the contribution option period; and

(c) returns to pensionable employment within 12 months of leaving.

(4) If paragraph (3) applies, the member may continue to make contributions in accordance with the option after returning to pensionable employment unless a refund of contributions has been made to the member under regulation E15 (early leavers' entitlement to refund of contributions).

(5) For the purposes of paragraph (4) it does not matter whether the member has paid any of the repaid contributions to the Scottish Ministers in accordance with regulation E15(3).”