

Ombudsman's Determination

Applicant	Mr N
Schemes	Scottish Teachers' Superannuation Scheme (the Scheme) Scottish Teachers' Pension Scheme (the new Scheme)
Respondent	Scottish Public Pensions Agency (SPPA)

Outcome

1. Mr N's complaint against SPPA is partly upheld. To put matters right, for the part that is upheld, SPPA shall award Mr N £500 for the significant distress and inconvenience that he has suffered.

Complaint summary

2. Mr N has complained that SPPA did not send him a starter pack when he joined the Scheme, so he misunderstood how the Scheme worked.
3. Mr N has also complained that SPPA provided him with incorrect information which caused him to miss the opportunity to receive a refund of the contributions that he paid into the Scheme.
4. Mr N believes that SPPA should refund the contributions that he made into both the Scheme and the new Scheme.

Background information, including submissions from the parties

5. In March 2011, a Government-commissioned report recommended replacing existing public service pension schemes in Scotland with a new type of scheme. Following this, SPPA introduced the new Scheme which would be a career average revalued earnings scheme (**CARE scheme**), rather than being based on a member's final salary.
6. After negotiations, the changes recommended in the report were accepted and formalised in the Public Service Pensions Act 2013. The new Scheme was due to be introduced for future service from 2015 onwards.

7. On 5 February 2014, Mr N joined Fife Council (**the Employer**) and became a member of the Scheme.
8. SPPA, the Scheme Administrator, has said it did not send Mr N a starter letter because the Employer did not send it the relevant new starter form containing Mr N's employment details.
9. In 2015, Mr N contacted SPPA for information about his pension. Mr N says that SPPA told him that it did not provide quotations in the first two years of membership of the Scheme. SPPA has no record of this telephone conversation.
10. On 1 April 2015, Mr N's membership transitioned into the new Scheme and his pension benefits in the Scheme were deferred.
11. On 30 June 2015, Mr N received a letter of appointment from the Employer which he signed on 1 July 2015. The letter explained that Mr N would be contractually enrolled into the new Scheme, which was a CARE scheme that came into effect on 1 April 2015. The letter directed Mr N to the SPPA website for further information.
12. On 22 December 2015, SPPA received Mr N's new starter form from the Employer. SPPA did not send Mr N a starter letter on this occasion.
13. On 8 March 2017, Mr N contacted SPPA because he had not received any information about his pension. SPPA directed Mr N to its online member services.
14. On 29 March 2017, SPPA sent Mr N his service record and pensionable earnings, based on information provided annually by the Employer.
15. On 18 April 2017, Mr N contacted SPPA to dispute the information in his service record, which he stated incorrectly showed that he had been employed part-time. Mr N agreed to provide SPPA with the correct information. Mr N then requested a refund of his contributions, or to be allowed to transfer out his pension benefits, but SPPA advised him that it was not possible because he had accrued more than two years' pensionable service.
16. Throughout April 2017, Mr N and SPPA corresponded about Mr N's incorrect service details, how a CARE scheme worked and Mr N's dissatisfaction with the administrative service provided by SPPA.
17. SPPA provided Mr N with a full breakdown of its service record for him. Mr N maintained that the record contained errors, so SPPA referred him to the Employer, explaining that it was reliant on the Employer to provide it with details of his pensionable service.
18. Mr N complained that the new Scheme information on the SPPA website was not helpful. SPPA discussed how a CARE scheme worked further with Mr N and agreed to contact the Employer about the ongoing, incorrect service enquiry. Mr N also agreed to contact the Employer about the issue.

19. In September 2017, Mr N requested an updated benefit statement. SPPA explained that it would send one once the service enquiry with the Employer had been fully investigated and resolved.
20. On 21 September 2017, SPPA contacted Mr N to confirm that it had received updated information from the Employer and that it had updated his service record in line with this. SPPA also confirmed that the new benefit statement would be uploaded to the online member services within six weeks. Mr N subsequently requested a copy of his employment history, which SPPA provided.
21. On 26 September 2018, SPPA issued a revised service breakdown to Mr N.
22. On 16 December 2018, Mr N complained to SPPA that:-
 - Since 2017, he had made a significant effort to get his service record corrected but it remained incorrect.
 - He did not receive any welcome documentation when he joined the Scheme in 2014.
 - He contacted SPPA in 2015 and was advised that he would receive correspondence once he had been a member of the Scheme for two years.
 - In 2015, his final salary pension moved to a CARE scheme, but he was not aware that it had moved; did not consent to it being moved; and was not given the opportunity to make an informed decision about joining the new Scheme.
 - He was not eligible for a refund of the contributions that he had made because he had more than two years' pensionable service.
 - In 2017, his service record was corrected and he was told that he would receive an email when the statement was updated, but this did not happen and the statements are still incorrect.
 - SPPA had breached his trust and had not followed the appropriate guidelines for providing him with information.
23. On 9 January 2019, SPPA issued its final response and said:-
 - The Employer should have provided him with information about the Scheme when he joined in 2014.
 - SPPA should have sent him a starter letter and an annual statement of his benefits when he joined the Scheme, so it apologised for not providing these.
 - It also apologised that Mr N was incorrectly informed that he would not receive correspondence until he had more than two years' pensionable service, because he should have received correspondence when he joined the Scheme.

- Mr N's pension statements were incorrect because the Employer had provided SPPA with inaccurate information. SPPA had liaised with the Employer for some months about the incorrect service record and it trusted that the information in the final response letter was correct. Mr N should contact the Employer if the service record remained incorrect.
- It had arranged to upload an updated 2018 statement to Mr N's online account.
- The new Scheme was introduced by the Government because final salary schemes were no longer deemed affordable. Members who were more than 13 years and six months from their normal retirement age, as at 1 April 2012, were moved to the new Scheme from 1 April 2015.
- The Employer was responsible for providing him with information about the new Scheme prior to its implementation. Further information could be found on the SPPA website.
- Mr N had more than two years' pensionable service, so he was not eligible for a refund of the contributions. The contributions would provide Mr N with pension benefits payable from state pension age.
- If Mr N remained dissatisfied, he could ask SPPA to review his complaint under stage two of its Complaint Handling Procedure (**CHP**).

24. On 29 January 2019, Mr N requested that SPPA review his complaint under stage two of its CHP. Mr N said that:-

- He would have made different decisions had he been given the correct information when he joined the Scheme, because the Scheme was not suitable for his needs and circumstances.
- It was unacceptable that he had to contact SPPA about his incorrect service records which should have been accurate and, in his view, were not his responsibility to correct.
- He could not understand how a CARE scheme worked and, had he been provided with information about it, he would have opted out.
- The errors that he raised had not been rectified in his statements.
- To resolve his complaint, he wanted SPPA to:-
 - Refund the contributions that he had paid since 2014; or
 - Allow him to transfer his pension to another provider; and
 - Provide an accurate statement showing how much had been paid into his fund and how much his lump sum would be when he retired.

25. On 20 February 2019, SPPA issued its stage two response under its CHP. It apologised that Mr N had not received the standard of service that he expected from SPPA and for any inconvenience or distress that it had caused. SPPA explained that it was reliant on employers to provide the correct information and had been reassured that the service and remuneration information it had received and put on its records was correct. In response to Mr N, SPPA said:-

New Starter information

- When Mr N joined the Scheme, both SPPA and the Employer should have provided him with information about the Scheme.
- It had included an undated copy of a starter letter for Mr N's information. The sample starter letter explained that Mr N had options, some of which were subject to time constraints, and directed Mr N to the SPPA website.
- Process improvements had been put in place to ensure that all new members were issued with new starter information.
- If Mr N felt that he had been disadvantaged as a result of not receiving new starter information, he could submit an appeal under SPPA's Internal Dispute Resolution Procedure (**IDRP**).

Service record

- It agreed that SPPA had produced incorrect statements as a result of incorrect information supplied by the Employer. But, it had been in contact with the Employer to ensure that the service and remuneration information was corrected.
- It had included a detailed breakdown of Mr N's employment history.
- It had made improvements to its processes so that updated statements were received within reasonable timescales.
- It did not provide a breakdown of service for the academic year, which is August to August, because the information provided by the Employer was based on the financial year, which is April to March.

Pension Scheme Reforms and the move to a CARE scheme

- The Employer should have provided Mr N with information about the new Scheme prior to its implementation.
- SPPA's website provided information about how a CARE scheme worked.
- When Mr N retired, he would have the option to commute part of his annual pension to receive a one-off, tax-free lump sum. It was not possible to claim all of the accrued pension as a one-off lump sum without an annual pension.

Mr N's request for a refund of contributions

- The Scheme regulations deemed Mr N ineligible for a refund of his contributions because he had accrued more than two calendar years' service.
- Mr N could dispute the application of the regulations under SPPA's IDRPs.

Mr N's request to transfer out or stop contributions

- Mr N could stop his contributions at any time, but if he opted out of the Scheme, he would lose his final salary linking. This meant that his pension would be preserved using his final pay and service at the time of leaving the Scheme, rather than at his retirement date.
- The Pensions Schemes Bill 2015 only permitted the transfer of benefits into another occupational pension scheme.

Annual Benefit Statement

- When Mr N joined the Scheme, SPPA only produced annual statements once a member had accrued two calendar years' service.
- Annual statements were calculated and produced automatically.
- SPPA did not produce or amend annual statements for a previous year as the most recent statement supersedes any previous statements.
- Mr N's most recent statement showed the correct pension amounts based on amended information that the Employer had provided.
- Mr N's pension age was incorrect for the final salary part of his pension. SPPA had arranged for this to be amended and Mr N would receive a notification confirming when this had happened.
- Annual statements were based on the financial year and the dates could not be tailored to the academic year.

26. On 28 February 2019, Mr N invoked the Scheme's IDRPs and said that:-

- If he was provided with information about the Scheme when he joined, he would have opted out in 2014.
- He believed he should be compensated by being put back into the position he would have been in, had he not been a member since 2014.
- He believed that his annual statements remained incorrect.
- He held benefits within an Australian Superannuation Fund, where the contributions were paid into a personal account which was available for him when he retired. He believed that all superannuation funds worked in the same way.

- He misunderstood how the Scheme worked because SPPA failed to provide him with information about it.
- He would like a refund of contributions or the option to transfer out to a more suitable pension plan.

27. On 17 June 2019, SPPA sent a service summary to Mr N following discussions with the Employer. The letter confirmed that Mr N would receive an IDRPs response in due course.

28. On 26 June 2019, SPPA issued its IDRPs response and said that:-

- The applicable regulations were The Teachers' Pension Scheme (Scotland) (No.2) Regulations 2014 (**the TPSS Regulations 2014**) and the Pension Scheme Act 1993 (**the 1993 Act**).
- The Director of Policy, on behalf of the Scottish Ministers, had to consider whether the TPSS Regulations 2014 had been applied correctly, whether these allowed for any discretion and what information Mr N was provided with when he joined the Scheme in 2014.
- The Director of Policy had no power to override the TPSS Regulations 2014 or to permit any departure from their terms, as approved by Parliament.
- Regulation 79 of the TPSS Regulations 2014 stated that a member qualifies for retirement benefits when they accrue at least two years' qualifying service.
- Regulation 183 of the TPSS Regulations 2014 states:-
 - “(1) A person (P) is entitled to a repayment of the balance of contributions calculated in accordance with regulation 185 on the entitlement day if—...
 - (c) paragraph (2) does not apply.
 - (2) This paragraph applies if—
 - (a) P is qualified for retirement benefits.”
- If a member has qualified for benefits, they are not entitled to a refund of contributions.
- Mr N had more than two years' qualifying service, so the regulations did not allow for a refund of contributions.
- It was a requirement of Section 95 (2A) of the 1993 Act that transfers out of the Scheme were made to a registered occupational pension scheme with defined benefits, not to a defined contribution scheme offering flexible benefits.
- Mr N could transfer out to an eligible occupational pension scheme.

- It was a requirement for public service schemes to reform under the Public Service Pensions Act 2013.
- CARE schemes were introduced from 1 April 2015 and applied to all public service pension schemes.
- The Director of Policy apologised that Mr N did not receive a starter letter when he joined the Scheme in 2014.
- The Employer confirmed Mr N's role on 30 June 2015 and his letter of appointment explained:-
 - The Scheme had closed, and the new Scheme came into effect from 1 April 2015.
 - Details of the new Scheme were available on the SPPA website.
- Mr N accepted his appointment on 1 July 2015 and did not make any enquiries about his pension following this letter.
- Mr N was signposted to the SPPA website within sufficient time to allow him to opt out of the Scheme.

29. Mr N remained dissatisfied with SPPA's response because:-

- SPPA referred him to its website which did not provide clear information and contained many subpages.
- SPPA did not provide him with the information that it should have when he joined the Scheme in 2014.
- He was provided with incorrect information in his telephone conversation with SPPA in 2015, and his reliance on this information meant that he was now ineligible for a refund of contributions.
- The IDRPs response did not acknowledge his first conversation with SPPA in 2015, when he was told that he would not receive any correspondence for the first two years' pensionable service.

Adjudicator's Opinion

30. Mr N's complaint was considered by one of our Adjudicators, who concluded that there had been maladministration on the part of SPPA. The Adjudicator's findings are summarised below:-

- Mr N joined the Scheme on 5 February 2014 and requested a refund of his contributions in 2017, by which time he had accrued more than two years' service. Regulation 183 of the TPSS Regulations 2014 did not allow for refunds of

contributions to members who qualified for retirement benefits or had more than two calendar years' service.

- There was no record of Mr N's telephone conversation with SPPA in 2015 so, while the conversation was not disputed, it could not be relied on as evidence.
- SPPA did not send Mr N new starter information when he joined the Scheme in 2014 because the Employer had not provided SPPA with his details which SPPA received in December 2015, but it missed the opportunity to send him information at that point.
- Mr N said that he sought further information from the SPPA website before and after the telephone conversation with SPPA in 2015. However, it would have been reasonable for him to have contacted SPPA again if his queries about the Scheme could not be resolved using the website.
- Even if Mr N was misinformed during his telephone conversation with SPPA in 2015, it was not reasonable for him to assume that the Scheme worked in a similar way to his Australian Superannuation Fund.
- Maladministration had occurred because SPPA failed to provide Mr N with information when it received his information from the Employer in December 2015. Had Mr N received the new starter information at this point, it might have allowed him to make a more informed decision about his membership in the Scheme and then the new Scheme.
- SPPA should award Mr N £500 in recognition of the significant distress and inconvenience that its error caused Mr N.

31. 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. Mr N said that:-

- He was unable to find the information that he needed on the SPPA website, so he telephoned SPPA but was told he could not receive information for two years.
- Based on the telephone conversation in 2015, it was reasonable for him to wait two years to receive documentation about the Scheme.
- It was unreasonable to disregard the telephone conversation, because what he was told during this call was the fundamental reason that he waited for two years to chase information, which has now caused him to be ineligible for a refund of contributions.
- He was unaware of the two years' pensionable service rule and could not locate this section on the SPPA website or in his employment contract.

- He did not know how to opt out, or if he even wanted to opt out in 2014, because he did not receive the starter letter. The information provided in the starter letter would have allowed him to identify that the Scheme was not suitable for him.
 - He should receive a higher award to recognise the time he spent trying to rectify the errors and that he was misled into joining the Scheme.
 - As of late July 2020, he will no longer reside in the United Kingdom, so his pension benefits will be “inaccessible”.
32. Mr N also provided confirmation from the Employer that it sent his employment information to SPPA in February 2015. The Adjudicator sent SPPA a copy of the email and SPPA had no further comments.
33. I agree with the Adjudicator’s Opinion and note the additional points made by Mr N.

Ombudsman’s decision

34. Mr N has complained that he did not receive a starter pack from SPPA when he joined the Scheme in 2014. The Employer did not send the necessary employment information to SPPA at this time, so SPPA was unable to provide Mr N with new starter information about the Scheme. SPPA has stated that it did not receive Mr N’s information until December 2015. However, Mr N has provided evidence of an email from the Employer, dated 3 February 2015, sharing the necessary details with SPPA. This means that SPPA missed two opportunities, during Mr N’s first two calendar years’ service to send him the new starter information.
35. Mr N maintains that he relied on the incorrect information that he was given during a telephone conversation with SPPA in 2015. SPPA does not dispute that the telephone conversation took place and I do not doubt Mr N’s recollection that he had a conversation with SPPA in 2015. SPPA has no recording of the telephone conversation so, without evidence of what was said, I am unable to reasonably conclude that Mr N was misinformed during this call.
36. Mr N is unhappy that he is not eligible for a refund of his contributions because he had more than two years’ pensionable service when he requested the refund. The Regulations do not allow for a refund of contributions because Mr N has qualified for retirement benefits that he will be eligible to take when he reaches stage pension age. Alternatively, Mr N is able to transfer his benefits to a qualifying scheme.
37. I find that Mr N suffered significant distress and inconvenience as a result of SPPA not providing him with the new starter information on two separate occasions. I do not agree that Mr N’s complaint warrants a higher award for the following reasons:-
- Mr N says that he spent time ensuring that his service record was corrected. SPPA held incorrect service records based on inaccurate records provided by the Employer. Mr N informed SPPA that the records were incorrect and SPPA sought

to correct them by liaising directly with the Employer. SPPA cannot be held accountable for the incorrect information provided by the Employer.

- Mr N is not entitled to a refund of contributions because it is not permitted by the Regulations that govern the Scheme and the new Scheme. I appreciate that Mr N has said he will no longer reside in the UK as of July 2020 but he has not suffered a financial loss. Instead, his benefits will remain preserved until he is eligible to draw his retirement benefits or opts to transfer his benefits to an approved arrangement in his new country of residence.
- SPPA responded to Mr N promptly at each stage of its complaints process and took reasonable steps to put matters right.

38. I partly uphold Mr N's complaint.

Directions

39. Within 14 days of the date of this Determination, SPPA shall award Mr N £500 for the significant distress and inconvenience its omissions have caused Mr N.

Anthony Arter

Pensions Ombudsman

18 August 2020