

Ombudsman's Determination

Applicant	Dr T
Scheme	Scottish Teachers' Pension Scheme 2015 (the Scheme)
Respondent	Scottish Public Pensions Agency (SPPA)

Outcome

1. Dr T's complaint against SPPA is partly upheld. To put matters right, SPPA shall pay Dr T a further £500, in addition to the redress that it has already offered her.

Complaint summary

2. Dr T's complaint concerns an incorrect quotation provided by SPPA in connection with the purchase of Additional Pension (**AP**) from the Scheme. Specifically:-
 - SPPA used new factors to calculate the cost of her AP purchase when those factors were not yet in force. This made it more expensive to purchase AP.
 - By the time that SPPA provided her with the correct information, she had been denied the opportunity to adjust the amount of her AP purchase before the new factors were introduced.

Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Dr T is a member of the Scheme, having re-joined it on 1 September 2005.
5. In September 2017, Dr T purchased AP of £3,500 per annum. The cost of this purchase was £2,510 for each unit of £250 per annum of pension (**the Unit**). Under the AP arrangements, a maximum total purchase of £7,000 per annum of AP was permitted.
6. On 1 February 2019, Dr T emailed SPPA. She said that she wished to purchase a further AP of £1,000 per annum. She attached the preliminary application form.

7. On 13 February 2019, Dr T contacted SPPA to request a response to her communication of 1 February 2019.
8. On the same day, SPPA acknowledged Dr T's request. It told her that changes to the factors would result in a delay to the calculation of the cost of the AP. It estimated that she would receive a response within 10 working days.
9. Dr T said that the SPPA website quoted a cost of £2,640 for each Unit of AP.
10. The calculator on the SPPA website included the following caveat:

“Warning: the factors used on the calculator are subject to change, we apply the up-to-date factors at the time of application so your estimate may vary from the estimate provided by the calculator.”
11. On 22 February 2019, Dr T emailed SPPA. She asked whether the new factors were in operation or whether they would come into effect from April 2019.
12. On 25 February 2019, SPPA acknowledged Dr T's query.
13. On 1 March 2019, Dr T emailed SPPA. She said that 10 working days had passed since its response of 13 February 2019. She requested an update.
14. On 6 March 2019, Dr T emailed SPPA again. She said that, even if it were to provide a quote the next day, she would not have the full 30-day window in which to arrange payment before 5 April 2019. She said that she was being denied the opportunity to purchase AP in the 2018/19 tax year despite making her application in good time.
15. On 7 March 2019, SPPA wrote to Dr T and apologised for the delay in responding. It said that it was working through a backlog of AP applications caused by the introduction of the new factors.
16. On 11 March 2019, Dr T emailed SPPA. She asked for a named contact who was handling the backlog of calculations so that she could contact them directly. She highlighted the time sensitive nature of her request.
17. On 12 March 2019, SPPA wrote to Dr T (**the March Quotation**). It said that, due to the change of factors, her purchase of AP would be more expensive. It confirmed that it would cost £3,050 per Unit. Her request to purchase AP of £1,000 per annum would cost £12,200. She was asked to complete an election form if she wished to proceed.
18. On 18 March 2019, Dr T emailed SPPA. She acknowledged the March Quotation; she asked:-
 - Whether the change to the factors was effective before 1 April 2019. She queried whether the cost of £2,640 for each Unit quoted online should be used.
 - When she could have sight of the new factors.
 - Whether she could submit an election form for a revised amount, rather than begin the process again by asking for a new quote. She said that she may wish to

adjust her current election by £250 or £500 per annum if the new price would apply.

19. On 25 March 2019, Dr T made a contribution of £12,200 to purchase AP of £1,000 per annum. She asked SPPA for a response to her question on the timing of the change of factors.
20. On 4 April 2019, SPPA contacted Dr T to acknowledge receipt of the payment of £12,200. It confirmed that it had received the payment on 25 March 2019.
21. On 9 April 2019, Dr T emailed SPPA to request a response to her query regarding the cost of her recent AP purchase.
22. On 3 May 2019, Dr T raised a complaint. She said that she had been overcharged for AP due to the early application of the revised factors.
23. On 8 May 2019, SPPA provided its response to Dr T's complaint which it had considered under stage one of the Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**). It upheld her complaint and said that:-
 - The revised AP factors were effective from 1 April 2019.
 - The total cost of her recent purchase of £1,000 per annum of AP should have been £10,560. This was based on a purchase price of £2,640 for each Unit of AP.
 - It had included a form to enable Dr T to request a refund of the amount she had been overcharged following her recent purchase of AP, which amounted to £1,640.
24. On 10 June 2019, Dr T raised a second complaint. She said that:-
 - On 18 December 2018, SPPA had issued an announcement: 'GAD Factors' (**the Announcement**). This had stated that: "any scheme members impacted by the change in factors will be advised on an individual basis".
 - She had received no information on the increased cost of purchasing AP until the March Quotation.
 - The quotation indicated that the new factors were already in force. She queried this on 18 March 2019, but did not receive a reply. She was first made aware that this was not the case on 8 May 2019. Had she been aware of the position at the time, she would have increased her March 2019 AP purchase by £2,500 per annum. Consequently, she would have used up her remaining allowance of £3,500 per annum before the new factors came into force.
 - She had suffered a financial loss amounting to £4,100. This was the difference between the cost of purchasing £2,500 per annum of AP based on the pre and post April 2019 factors.

25. On 14 June 2019, SPPA provided its response under stage one of the IDRP. It did not uphold Dr T's complaint. It said that:-
- The Announcement would only have informed Dr T of the change of factors if she had been purchasing AP by monthly contributions.
 - At the time of its email of 25 March 2019, no error in the calculation of Dr T's AP had been identified. There was still an opportunity for Dr T to adjust the AP she wished to purchase ahead of the change of factors.
 - It had apologised to Dr T for the error in its initial calculation and had corrected the mistake and returned the overpaid monies to her.
 - It had not received any confirmation from Dr T that she intended to purchase the full remaining AP before 1 April 2019.
 - It had not provided incorrect advice which had caused Dr T a financial loss.
26. On 25 June 2019, Dr T emailed SPPA. She confirmed that she wished to purchase a further AP of £1,250 per annum.
27. On 15 July 2019, SPPA provided Dr T with a quotation for the purchase of £1,250 per annum of AP. The cost quoted was £15,250.
28. On 25 July 2019, Dr T made a lump sum payment of £15,250 to purchase £1,250 per annum of AP.
29. On 30 July 2019, Dr T notified SPPA that she wished to appeal its decision of 14 June 2019. This initiated stage two of the IDRP. Dr T said that:-
- In March 2019, SPPA had advised her of the cost of purchasing AP. This advice was incorrect and was material in dissuading her from making a larger purchase.
 - The error was not corrected until 8 May 2019, giving her no opportunity to adjust her AP purchase before the new factors came into force on 1 April 2019.
 - The difference in the cost of purchasing AP, using the pre, as opposed to the post April 2019 factors, was a key consideration in her decision to purchase more AP.
 - She could have taken advantage of the lower cost of AP Units and benefited from tax relief on her entire purchase in the 2018/19 tax year. She could have carried forward any unused annual allowance (**AA**) in order to remain within the AA limit.
 - The cost of purchasing AP increased by over 15% in the 2019/20 tax year. Based on her expected income, she would not have obtained full tax relief on the maximum possible contributions, as any unused AA carried forward would have been used up.
 - It would have been more advantageous for her to purchase the maximum AP in the 2018/19 tax year.

30. On 26 August 2019, SPPA provided its response under stage two of the IDRP. It partially upheld Dr T's complaint. It said that:-

- It agreed that it had not provided the level of service that would be expected. A number of opportunities had existed for it to correct the original quote, but these were missed.
- It agreed that Dr T had not been given adequate time to amend her election.
- The maximum AP available for Dr T to purchase in March 2019 was £3,500 per annum. In her email of 18 March 2019, Dr T indicated that she may change the amount that she wished to purchase by £250 or £500 per annum. She did not give any indication at the time that she wished to purchase AP of £3,500 per annum before April 2019.
- It offered Dr T £100 in recognition of its service failings.

31. On 18 September 2019, Dr T left active membership of the Scheme and was no longer eligible to purchase AP.

32. The following additional points were made by SPPA:-

- Neither SPPA nor the government actuary's department had instructed a suspension of AP calculations. So, a response should have been sent to Dr T at the time.
- On 18 March 2019, Dr T said that she may wish to increase her AP purchase by £250 or £500 per annum before 1 April 2019. Taking the higher of these two figures, the cost of purchasing £500 per annum of pension was £820 higher using the post April 2019 factors.
- Dr T had received poor service from SPPA. In recognition of this, it would increase the amount it had offered to £500. It would also pay her a further £820, in recognition of the higher cost of purchasing £500 per annum of AP.

33. The following additional points were made by Dr T:-

- Her initial intention was to purchase the maximum allowable AP of £7,000 per annum. She was planning to make AP purchases of £3,500 per annum in the 2017/18 tax year, £1,000 per annum in 2018/19 and £2,500 per annum in 2019/20.
- It was clear from her email of 18 March 2019 that she was considering adjusting her AP purchase by £250 or £500 per annum, if the change of factors was effective immediately. Also, she may have adjusted the amount up or down.
- This does not reflect what she would have done if presented with the opportunity of being able to purchase further AP at the pre April 2019 rate. Her approach would have been to maximise her contribution.

- The redress offered by SPPA is not sufficient to fully fund the additional pension she would have to purchase on the open market. The cost of £250 per annum of pension on the open market is far in excess of the AP rate.
- In relation to her purchase of £1,250 per annum of AP on 25 July 2019, there was a difference in cost of £2,050 between using the pre and post April 2019 factors. She also had a remaining AP allowance of £1,250 per annum when she left active membership of the Scheme. This would cost approximately £44,515 to purchase on the open market. The open market cost was £31,315 higher than the cost of purchasing £1,250 per annum of AP in the Scheme using the pre April 2019 factors. So, she has suffered a financial loss of £33,365.
- She would like interest to be added to any sums that are due to her.

34. A summary of the AP purchases made by Dr T is displayed in the Appendix.

Adjudicator's Opinion

35. Dr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by SPPA. The Adjudicator took the view that the distress and inconvenience payment offered by SPPA adequately reflected the significant distress and inconvenience that Dr T had suffered as a result of SPPA's maladministration. The Adjudicator's findings are summarised below:-

- SPPA agreed that the March Quotation used factors that were not due to come into force until 1 April 2019. As a result of this, the cost of purchasing the AP that it had quoted to Dr T was higher than it should have been. So, there was no dispute that Dr T had been disadvantaged as a result.
- On 8 May 2019, SPPA provided its response to the complaint Dr T subsequently raised. In its response, it acknowledged its error. It also provided Dr T with the means to reclaim the £1,640 that she had been overcharged for the £1,000 per annum of AP that she had purchased on 25 March 2019.
- The Adjudicator took the view that this was appropriate redress for the financial injustice that Dr T had suffered in relation to that purchase.
- Dr T asked SPPA on 18 March 2019 when the new factors were due to come into force. She did not receive a response until after 1 April 2019. The Adjudicator was of the opinion that the timing of SPPA's response did not give Dr T the opportunity to make an adjustment to the amount of AP she was purchasing using the less expensive, pre 1 April 2019, factors.
- Dr T said that, before she was aware of the change of factors, she was planning to purchase AP of £1,000 per annum in the 2018/19 tax year followed by a further £2,500 per annum in 2019/20. This would have increased her total purchase of AP to the maximum of £7,000 per annum.

- Dr T received confirmation from SPPA that the new factors came into force on 1 April 2019. Having received this confirmation, she said that, given the opportunity, she would have made a further purchase of AP in March 2019. Dr T also said that the purchase would have been for £2,500 per annum of AP, thus enabling her to reach the maximum purchase earlier than initially planned.
- The Adjudicator was not persuaded that Dr T would have taken this course of action. If Dr T wanted to eventually purchase a total of £7,000 per annum of AP, it would have been cheaper for her to bring her plans forward as she had suggested. However, the Adjudicator noted that the lower cost of the purchase was not the only factor that she would have had to consider at the time. For example, she would have had to consider the availability of funds to make the purchase and the potential impact that this would have had on her other spending plans.
- Furthermore, the Adjudicator noted that, before Dr T left active membership in September 2019, she still had £1,250 per annum of her AP allowance available. The Adjudicator acknowledged that the increased cost of purchasing AP, and her upcoming exit from active service in the Scheme, may have resulted in Dr T reconsidering her plans to use up her full allowance. However, Dr T did have the opportunity, at the time, to use up her full allowance; Dr T chose not to utilise that allowance.
- The Adjudicator also considered what would have happened had the March Quotation been correct. He said that it was possible that the purchase of AP would have been finalised, without Dr T becoming aware that a change to the factors was imminent. SPPA said that its policy was to automatically notify members purchasing AP via monthly payments when a change of factors was due to take place. For this reason, the Adjudicator took the view that it could not be confirmed, with any degree of certainty, that Dr T would have known about the new factors before 1 April 2019, had no maladministration taken place.
- For these reasons, the Adjudicator was not persuaded that there was sufficient evidence that Dr T would have made an additional AP purchase of £2,500 before 1 April 2019. Given this, the Adjudicator was of the opinion that SPPA could not be held responsible for Dr T's alleged financial loss. In the Adjudicator's view, the financial remedy SPPA had already offered to Dr T provided adequate redress in the circumstances.
- The Adjudicator then considered any non-financial injustice that Dr T had suffered. It had been agreed by all parties to the complaint that SPPA's actions, in providing Dr T with an incorrect AP costing in the March Quotation, amounted to maladministration. In addition, the timeliness and quality of SPPA's responses to questions raised by Dr T were not always up to the standard that would be expected from pension administrators. In the Adjudicator's opinion, this maladministration had caused significant distress and inconvenience to Dr T.

However, the Adjudicator was satisfied that the £500 distress and inconvenience payment already offered by SPPA was adequate in the circumstances.

36. Dr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

37. Dr T provided her further comments. She said:-

- The Adjudicator took the view that SPPA's offer of £820 was adequate redress for the financial injustice she had suffered. This was based on there being a lack of evidence of her intention to purchase more than a further £500 per annum of AP in the year ending 31 March 2019. He went on to note that other factors would have had to have been taken into account. These included the availability of funds to make a higher purchase and the impact on her spending plans.
- On 18 March 2019, having received no reply from SPPA, she made a £20,000 gross, £16,000 net, contribution to her self-invested personal pension (**SIPP**). This indicated that she had the available funds in the year to 31 March 2019 to make a further contribution to purchase AP in the Scheme. She would have done this, rather than contribute to her SIPP, had SPPA responded in a timely and accurate fashion to the points she had raised in February and March 2019.
- With the contribution of £20,000, she could have purchased a further £1,893 per annum of AP in the Scheme in the year to 31 March 2019. As purchases had to be made in units of £200 per annum, this rounded to a further £2,000 per annum of AP. She would have purchased at least this, and possibly the full remaining AP allowance of £2,500 per annum.
- Had she purchased a further £2,000 per annum of AP, then the cost difference between using the pre and post April 2019 factors would have been £3,280. This figure was more appropriate redress than the £820 offered by SPPA.
- Significance had been attributed to the fact that she had not purchased all available AP before she left active membership of the Scheme on 18 September 2019. It was not reasonable to take this as an indication that she would not have purchased the full AP allowance in the year to 31 March 2019 had she had the opportunity. After the £1,250 per annum purchase of AP that she did make on 25 July 2019, she would not have received income tax relief from a further purchase.
- It was unfair that an irregular purchaser of AP received less notice of a change to the cost of purchasing AP than a regular monthly contributor.

38. I note the additional points raised by Dr T, but I agree with the Adjudicator's opinion on the financial injustice suffered by her. However, I have reviewed the redress for non-financial injustice suggested by the Adjudicator in the light of Dr T's comments.

Ombudsman's decision

39. Dr T's complaint concerns an AP quotation that was based on factors that were not in force at the time. Dr T did not receive confirmation of when the new, more expensive, factors were due to come into force until after they were in place. Dr T asserts that this denied her the possibility of purchasing a different amount of AP using the old factors.
40. In his Opinion, the Adjudicator took the view that there was a lack of evidence of Dr T's intention to purchase more than a further £500 per annum of AP in the year ending 31 March 2019. In her feedback on the Adjudicator's Opinion, Dr T has challenged this conclusion.
41. Dr T provided evidence of a contribution she made to her SIPP on 18 March 2019. She said that, had SPPA provided her with timely and accurate information in relation to the cost of purchasing AP, she would have made a further contribution to the Scheme to purchase AP in March 2019. This contribution would have been in place of the contribution she made to her SIPP. She said that, allowing for rounding, the money she invested in her SIPP would have enabled her to purchase a further £2,000 per annum of AP in the Scheme.
42. Dr T has demonstrated that she had £20,000 gross available in March 2019 and that this money was set aside for her pension provision.
43. However, I am not fully persuaded, on the balance of probability, that Dr T would have used this money to purchase AP in the Scheme had she been provided with correct information by SPPA. It is possible that she was already planning to make the contribution in March 2019 to her SIPP to, for example, spread the risk. It may be that hindsight is now being used to suggest that an alternative course of action would have been taken.
44. I am also mindful that, even if it can be proven that Dr T would have purchased AP in March 2019 with this money, it is not necessarily the case that she has lost out. It is difficult to say with certainty as her SIPP may provide better benefits in the future. In addition, her SIPP may provide other advantages, such as different death benefits, which Dr T may have weighed up.
45. For these reasons, I do not agree that the £820 offered to Dr T by SPPA for any financial loss she has suffered should be increased to the level that Dr T has suggested.
46. I note Dr T's comment that it is unfair that irregular purchasers of AP received less notice of a change in the cost of purchasing AP than a regular monthly contributor. It is important that regular contributors are notified of a change in the cost as this has an immediate impact on the amount that they are paying each month. While I acknowledge that Dr T could have benefitted from such a notification, I do not agree that SPPA was obliged to notify occasional savers of the change in cost in advance.

47. On the balance of probabilities, if no error had been made by SPPA, Dr T would not have known about the higher cost of purchasing AP until it was too late for her to make an additional purchase in the year to 31 March 2019. Had this been the case, she would have been likely to be in the same position that she is now.
48. However, I acknowledge that these were unfortunate circumstances which would have been upsetting for Dr T. She was provided with a quotation for the purchase of AP which used a factor which was not yet in force. In addition, SPPA did not clarify the position in time for her to consider adjusting her AP purchase for the year ending 31 March 2019. She had to contact it on a number of occasions to obtain this information. The whole episode would have caused Dr T serious distress and inconvenience. For these reasons, I am increasing the award for non-financial injustice to £1,000.
49. I partly uphold Dr T's complaint.

Directions

50. Within 28 days of the date of this Determination, SPPA shall:
- pay Dr T a further £500 in recognition of the serious non-financial injustice it caused her; and
 - if not already paid, pay the redress that it has already offered Dr T. This consists of payments of £500 and £820 for non-financial injustice and the additional cost of purchasing £500 per annum of AP respectively.

Anthony Arter

Pensions Ombudsman
16 December 2021

Appendix

Summary of Dr T's AP purchases

The figures in brackets reflect corrections made by SPPA after the initial purchases had been completed

Date of purchase	AP purchased (£ per annum)	Cost per unit of AP (£)	Total cost of purchase (£)	AP allowance remaining after purchase (£ per annum)
September 2017	3,500	2,510	35,140	3,500
25 March 2019	1,000	3,050 (2,640)	12,200 (10,560)	2,500
25 July 2019	1,250	3,050	15,250	1,250