

Ombudsman's Determination

Applicant	Ms Y
Scheme	Scottish Teachers' Superannuation Scheme (the Scheme)
Respondent	University of the West of Scotland (UWS)

Outcome

1. Ms Y's complaint is upheld and to put matters right, UWS shall pay Ms Y £500, in total, in recognition of the significant distress and inconvenience she has suffered.

Complaint summary

2. Ms Y has complained about UWS' offer of redress as it does not adequately compensate her for the time spent rectifying UWS' errors.

Background information, including submissions from the parties

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. UWS employed Ms Y on a part-time basis. As part of her employment, UWS enrolled Ms Y into the final salary section of the Scheme.
5. Following a change in auto enrolment legislation, UWS sent all part-time employees a letter which advised them of the new changes and what needed to be done if they did not meet the new auto enrolment criteria. The new changes would only take effect if a new employment contract was signed.
6. Ms Y did not receive this letter, and as a result, was opted out of the Scheme when she signed her new employment contract. This is because Ms Y was unaware that she had not met the new auto enrolment criteria and needed to opt back into the Scheme following the legislative change.
7. Once the error was highlighted, it was agreed that Ms Y could make a payment to cover the missing contributions between August 2015 and August 2016. UWS paid the missing employer contributions at the same time.

8. On 22 January 2019, Ms Y submitted her retirement application form to Scottish Public Pensions Agency (**SPPA**), the Scheme administrators.
9. On 31 January 2019, SPPA contacted UWS regarding discrepancies in Ms Y's pensionable pay. Once UWS provided SPPA with the correct pensionable pay, SPPA noticed further discrepancies in Ms Y's holiday pay. In line with the Scheme regulations, SPPA expected contributions to be deducted from the holiday pay.
10. On 26 March 2019, SPPA emailed Ms Y to confirm it was discussing an issue with UWS regarding her holiday pay. SPPA stated that such contributions should have been deducted.
11. On 1 April 2019, SPPA emailed Ms Y and said that it was still awaiting a response from UWS regarding the issue concerning holiday pay contributions. It apologised that it could not provide a timescale.
12. On 4 April 2019, following an exchange of emails between UWS and Ms Y, UWS reiterated to Ms Y that all calculations were correct, and the contributions had been correctly deducted.
13. On 13 May 2019, SPPA confirmed to Ms Y that it would be visiting UWS to discuss a resolution to the missing contributions in respect of Ms Y's holiday pay. Once the backdated contributions had been paid, it said that a retirement illustration could be sent. It apologised for the inconvenience caused.
14. On 17 May 2019, Ms Y made a complaint against UWS over the administration of her pension. Ms Y said that:-
 - She had tried to begin the process of retiring in January 2019, but this had not been possible due to discrepancies with the pension data UWS sent to SPPA.
 - As a result of the errors, she had been unable to plan for her financial future.
 - SPPA informed UWS that there were missing contributions in relation to Ms Y's holiday pay. However, UWS kept stating its calculations were correct.
 - The Scheme regulations had not been followed.
 - She had been recovering from heart surgery and her time could have been better spent in recovery, rather than dealing with errors by UWS.
15. On 21 May 2019, UWS emailed Ms Y to confirm that a meeting was arranged with SPPA for 31 May 2019 to resolve the ongoing issue.
16. On 31 May 2019, UWS emailed Ms Y to provide the outcome of the meeting. It said that:-
 - There should have been additional contributions made into Ms Y's pension totalling £566.75. This included £167.24 of employee contributions.

- If Ms Y agreed to this calculation, it would pay both the employee and employer contributions in recognition of the length of time it had taken to conclude the matter.
 - The process had been changed going forward and additional checks had been added. It apologised for any inconvenience caused.
17. On 2 June 2019, Ms Y responded and said that she had expected her complaint to be dealt with formally. Further, the gesture to pay the employee contributions could have been reasonably expected. However, this amount did not adequately compensate her for the time and effort spent dealing with this.
18. In response, UWS said it treated its response on 31 May 2019 as stage one of the Internal Dispute Resolution Procedure (**IDRP**). As Ms Y remained dissatisfied with the outcome, it would consider the matter again under stage two of the IDRP.
19. In September 2019, USW responded under stage two of the IDRP, and said that:-
- The previous apology and offer to pay the employee contributions of £167.24 had been deemed insufficient by Ms Y.
 - It did uphold the complaint, however, it felt that the offer of £167.24 was fair and reasonable in the circumstances and would not look to increase this.

Adjudicator's Opinion

20. Ms Y's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of UWS and that an increased award for the distress and inconvenience caused was warranted. The Adjudicator's findings are summarised below:-
- There is no dispute that UWS caused two errors. Firstly, it failed to send Ms Y a letter which confirmed the new auto enrolment requirements, so, Ms Y did not know she had to opt into the Scheme. As a result, Ms Y was no longer an active member when the new requirements came into force. This issue was rectified as UWS agreed that Ms Y could pay the employee contributions for the time she had been opted out of the Scheme and UWS would pay the employer contributions. This meant Ms Y was in the same financial position as she would have been had the error not occurred.
 - The second error was in relation to UWS not deducting pension contributions from Ms Y's holiday pay. This resulted in missing contributions amounting to £566.75. UWS agreed to pay this whole amount, including the employee contributions, in recognition of the time and effort Ms Y put into resolving the issues. So, the offer made by UWS would put Ms Y in the same financial position had the error not occurred.

- The Adjudicator noted that, as Ms Y is a final salary member, she had not suffered a financial loss to her benefits as a result of the late payment of contributions.
- UWS offered to pay the missing employee contributions of £167.24 in recognition of the inconvenience caused. However, Ms Y stated this offer did not adequately compensate her and the Adjudicator agreed. It was the Adjudicator's view that a total award of £500 would be sufficient as this would be in keeping with the guidelines for significant distress and inconvenience. While each solution offered to the errors meant that there was not a long-term effect on Ms Y's pension, it took nearly five months for her to get the solution to the second error, at a time when she was trying to plan her retirement.

21. Ms Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I note the additional points raised by Ms Y but I agree with the Adjudicator's Opinion.
22. Ms Y said that her situation warranted a higher award, as there were several errors that had a lasting effect over a prolonged period. Further, UWS was slow to put matters right.

Ombudsman's decision

23. There was no dispute between the parties to the complaint that there had been maladministration. However, Ms Y argued that her situation warranted a higher award in recognition of the distress and inconvenience she had suffered.
24. Ms Y first discovered an error when she realised that she had not been auto enrolled back into the Scheme of which she had been a member until the auto enrolment legislative changes. As a result, UWS enrolled Ms Y into the Scheme with a backdated start date, and all missed contributions were paid accordingly. This meant Ms Y had been put in the same financial position had the error not occurred. I note that Ms Y did not raise a complaint regarding this issue at the time, so it is reasonable to assume she was content with the outcome. I am of the view that this error would have caused minimal distress and inconvenience as the error was quickly resolved and did not have an impact on Ms Y's pension entitlement.
25. The second error was discovered by SPPA on 31 January 2020, due to discrepancies in Ms Y's pensionable pay and holiday pay. It took until May 2020 for UWS to agree with SPPA that there were in fact errors. I appreciate that SPPA telling Ms Y there were errors and UWS stating there were not any errors would have caused Ms Y distress and inconvenience. However, once UWS understood the error, it was quick to rectify this and offered to put matters right.
26. I accept that the second error would have caused Ms Y a higher level of distress and inconvenience and while this is reflected in UWS offering to pay the missing employee contributions of £167.24 I find that this is insufficient in the circumstances.

CAS-42976-B4H7

It took five months for UWS to put matters right which would undoubtedly have caused Ms Y significant distress and inconvenience.

27. I uphold Ms Y's complaint.

Directions

28. Within 28 days of the date of this Determination, UWS shall pay Ms Y an additional amount of 332.76 in recognition of the significant distress and inconvenience caused.

Anthony Arter

Pensions Ombudsman
4 March 2022