

Ombudsman's Determination

Applicant	Mrs E
Scheme	Universities Superannuation Scheme (the Scheme)
Respondents	University of Southampton (UoS) Universities Superannuation Scheme Limited (the Trustee)

Outcome

1. Mrs E's complaint against UoS and the Trustee is partly upheld. To put matters right, UoS and the Trustee shall action Mrs E's chosen option, set out in paragraph 32 below.

Complaint summary

2. Mrs E's added years policy ended in February 2016 however she continued to make contributions until September 2018. As a result, Mrs E has accumulated overpaid contributions. Mrs E has complained about the decision not to allow her to use these overpaid contributions towards purchasing additional pensionable service.

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. Mrs E began employment at UoS in 1999 and joined the final salary section of the Scheme. Under this section, Mrs E had the option to pay a monthly additional voluntary contribution (**AVC**) to increase her pensionable service; known as added years.
5. In 2004, Mrs E completed an application form (**the Form**) to purchase an added years policy (**the Policy**).
6. The Policy stated that the AVC payments would be deducted from 1 May 2004 and cease on 2 February 2016. In total, Mrs E would purchase an additional five years and 76 days of pensionable service.

7. The notes on the Form stated:-

“I understand that the additional voluntary contributions shall continue until the due to end date indicated on this form, or my earlier exit from the scheme.”

8. In March 2016, the final salary section of the Scheme closed, and all active members ceased accruing final salary benefits. All members began accruing benefits in the new career revalued benefit section of the Scheme (**the Income Builder Section**). In October 2016, a new defined contribution section was introduced (**the Investment Builder Section**).

9. In 2018, after Mrs E had received her annual benefit statement, she contacted UoS to query why she was still making AVCs towards the Policy. UoS stated that, the AVC deductions were a mistake. The Trustee had failed to inform UoS that the Policy had ended and that it should stop making deductions.

10. In September 2018, the added years contributions ceased.

11. As a result, Mrs E requested to continue making AVC payments and purchase additional pensionable service at the same rate that was agreed under the Policy. Mrs E said she thought the end date was only an estimate. Further, Mrs E claimed that as the Trustee had failed to notify her of the end date, she was not given the opportunity to review the decision she made in 2004.

12. Following her request, the Trustee presented Mrs E with three options in respect of the overpaid contributions made since February 2016. These were:-

- A lump sum of added years contributions into the Income Builder Section amounting to £1,950.72.
- The total contribution amount of £6,193.13 to be paid into the Investment Builder Section.
- A refund of all contributions, minus the tax relief.

13. Mrs E was unhappy with these options as she wanted to purchase added years in the final salary section of the Scheme on the same basis as the Policy. As a result, Mrs E raised a complaint under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).

14. In response the Trustee said that:-

- The Form stated the end date of the Policy. The Form did not suggest that the AVCs could continue after this date, or that the Policy could be extended.
- Mrs E’s misunderstanding did not entitle her to continue accruing benefits in accordance with the Policy.

- It did not have a responsibility to remind Mrs E or UoS that the Policy was due to end.
 - UoS had the responsibility to deduct contributions at the correct rate for the correct duration period.
 - It did not uphold the complaint.
15. Mrs E remained dissatisfied with the decision and, in August 2019, requested that her complaint be further considered under stage two of the IDR. Mrs E reiterated that UoS did not tell her that her contributions would cease after the Policy had ended. Mrs E thought she could continue to accrue additional pensionable service until her retirement date.
16. In October 2019, in response at stage two of the IDR, the Trustee said that:-
- The Form was unambiguous. It set out the end date and explained what would happen if Mrs E left before that date. The Form did not state that Mrs E could continue to make AVCs after the end date.
 - It did not uphold the complaint and reiterated the three options available to Mrs E in respect to the overpaid contributions.

The Trustee's position

17. Contributions made after the Policy had ended would not be in accordance with the Policy terms.
18. It had no duty to inform Mrs E or UoS that the Policy had ended. To do so, would place an unrealistic administrative burden on it, to review and monitor each individual policy.
19. The contributions were administered by UoS, so it would be unable to identify if there had been an overpayment.
20. The final salary section of the Scheme is closed, so added years cannot be purchased because the governing rules no longer permit this type of accrual.
21. Mrs E has not suffered a financial loss as she is still entitled to all the contributions she has made.

UoS' position

22. Its payroll team should have been instructed, by the Trustee, to stop deducting contributions once the Policy ended.
23. It was an oversight that the contributions continued beyond the Policy end date.

Adjudicator's Opinion

24. Mrs E's complaint was considered by one of our Adjudicators who concluded that no further action was required by UoS or the Trustee and the complaint should not be upheld. The Adjudicator's findings are summarised below:-

- The Policy ceased on 2 February 2016. The notes on the Policy clearly state that the contributions would be deducted until the Policy end date. However, monthly deductions were taken from Mrs E after the Policy had ended. The Adjudicator concluded that this amounted to maladministration.
- As a result of the erroneous deductions, the Trustee provided Mrs E with three options.
- Mrs E rejected all the options as she only wanted her contributions to go towards a new added years policy within the final salary section of the Scheme. The Trustee rejected this request as the final salary section was closed to future accrual. As this was not an option under the rules, the Adjudicator concluded that the three options provided by the Trustee were reasonable. Further, the wording in the Policy was clear and did not give Mrs E the option to extend the Policy.
- The notes on the Policy should have made Mrs E reasonably aware that the Policy would end in February 2016. As the Policy required the Form to be completed, Mrs E should have been aware that a similar procedure would need to be followed again. Before and after this date, Mrs E did not make any contact with UoS to discuss the possibility of extending or forming a new added years policy.
- Mrs E has argued that she was not contacted once the Policy had ended, however, there is nothing in the notes enclosed with the Form to suggest that either UoS or the Trustee would do so.
- In addition, the final salary section of the Scheme closed for future accrual in March 2016. The Trustee has a duty to govern the Scheme in accordance with the rules of the Scheme. Mrs E cannot gain further final salary benefits under the Scheme rules.
- The Adjudicator had not seen any evidence to show that the Trustee is able to allow Mrs E to purchase additional added years within the final salary section of the Scheme. In the Adjudicator's view, Mrs E had suffered a loss of expectation rather than an actual financial loss. The fact that the Trustee provided three alternatives was more than reasonable in the circumstances and it was up to Mrs E to choose her preferred option.
- As there has been maladministration, the Adjudicator considered the non-financial injustice that Mrs E has suffered. The error was only highlighted after Mrs E noticed the deductions after the Policy end date. However, UoS was quick to stop the erroneous contributions and the Trustee was quick to provide Mrs E with fair and reasonable solutions to the maladministration. While Mrs E has suffered

some inconvenience in rectifying the matter, the Adjudicator concluded that it was not significant enough to make an award.

- If Mrs E opts for a refund of the overpaid contributions less tax relief, then interest should be added at the prescribed rate to the repaid sum.

25. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I disagree with the Adjudicator's Opinion and consider that the complaint should be upheld in part. I have noted the additional points made by Mrs E. Mrs E said that:-

- If the erroneous contributions were not deducted, she would have invested the funds in a Stocks and Shares Individual Savings Account (**ISA**). These funds would have had an annual rate of return of 8.2%. So, if the base interest rate is applied, she has suffered a financial loss.
- She is unable to provide any evidence of this rate of return, as she did not have the funds to open an ISA. The 8.2% is an average rate of return for an ISA.
- An award is warranted in her circumstances as she found the process time consuming and stressful.

Ombudsman's decision

26. Mrs E appears to have accepted that she is unable to purchase additional years within the final salary section of the Scheme. Now, Mrs E is left with three potential options which I find are reasonable. Based on Mrs E's comments, Mrs E would like a refund of contributions with an annual rate of interest at 8.2% applied to the refund.
27. Mrs E has based this rate of return as if she had invested in an ISA. Mrs E has not been able to provide any evidence that she would have taken such action. I find that it is only with the benefit of hindsight that Mrs E is suggesting she would have invested the contributions into an ISA.
28. If Mrs E selects the option to receive a refund of contributions, then I agree that interest should be applied at the Bank of England base rate.
29. Further, by starting the Policy, Mrs E had shown that her intention was to increase the pension benefits available to her at retirement. The Trustee has offered Mrs E the option to use the overpaid contributions towards either the Income Builder Section or the Investment Builder Section of the Scheme. This would be in line with Mrs E's initial intention to increase her pension benefits.
30. Mrs E argues that an award should be made in recognition of the stress she has suffered. I agree that Mrs E has suffered distress and inconvenience. However, UoS and the Trustee were quick to stop the incorrect contributions and provide Mrs E with adequate solutions. I can appreciate it may have been time consuming for Mrs E, however, it is not sufficient to warrant an award.

31. I uphold Mrs E's complaint in part.

Directions

32. Within 21 days of the date of this Determination, based on the option selected by Mrs E, UoS and the Trustee shall either:

- pay all overpaid contributions into the Income Builder Section;
 - pay all overpaid contributions into the Investment Builder Section;
- or
- refund all overpaid contributions, minus the tax relief, with interest applied at the Bank of England base rate.

Anthony Arter

Pensions Ombudsman
28 March 2022