

Ombudsman's Determination

Applicant	Mrs H
Scheme	NHS Superannuation Scheme (Scotland)
Respondents	Scottish Public Pensions Agency (SPPA)

Outcome

1. Mrs H's complaint is upheld and to put matters right SPPA should pay compensation of £750.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs H complains about the information given to her by SPPA about her retirement benefits and age from which she could have retired.

Background information, including submissions from the parties

4. Mrs H was employed by NHS Lothian as a midwife. She joined the Scheme on 8 October 2001. She was classed as a special status member. Mrs H decided to transfer in her pension benefits from the Lothian Pension Fund. The Scheme used the transfer value to add 11 years 350 days reckonable service.
5. On 27 October 2014, Mrs H called SPPA twice to enquire about her Scheme membership. She was told by SPPA on both occasions that she qualified for special class membership and that she could retire from age 55 without any reduction to the pension.
6. On July 2015 and August 2015 Mrs H asked for retirement statements from SPPA based on her retiring on her 55th birthday in December 2016. In August 2015, SPPA identified that they made a mistake and that Mrs H did not qualify for special class membership. SPPA apologised for the error and informed Mrs H that her normal retirement age is 60, not 55.
7. SPPA said that under the Scheme regulations (see appendix), only those members who held existing special class status before the 1995 regulations came into force, continued to have special class membership. As Mrs H joined in 2001, she was not eligible to have special class membership.

8. Mrs H says that she relied on the information SPPA gave her. She worked extra hours and made overpayments to her mortgage in order to reduce it as soon as possible before her 55th birthday. The bank statements supplied by Mrs H show additional overpayments commencing from October 2015 onwards.
9. Further Mrs H says that she relied on the information to undertake home extension, with work meant to start from October 2015. She had arranged a loan from her elderly parents of £35,000, and she agreed to repay this with the lump sum payment from the pension.
10. SPPA offered £300, later increased to £500 as compensation for the distress Mrs H experienced. Mrs H did not accept the offer.

Adjudicator's Opinion

11. Mrs H's complaint was considered by one of our Adjudicators who concluded that further action was required by SPPA. The Adjudicator's findings are summarised briefly below:
 - SPPA agreed that they made a mistake and that Mrs H should not have been told that she qualified for special class status, when she joined the Scheme in 2001.
 - The Adjudicator concluded that making mortgage overpayments could not be deemed as acting to her detriment, as the mortgage needed to be repaid.
 - Mrs H borrowed money from her parents. Loans from family members are not on the same basis as commercial loans.
 - Mrs H knew the correct position on August 2015 therefore she had the opportunity not to undertake home improvements in October 2015. She could have mitigated her losses by returning the loan from her parents and also deciding to postpone any building works.
 - But SPPA admitted making a mistake and the mistake did cause Mrs H significant distress and inconvenience. The Adjudicator asked SPPA to pay £750 in compensation.
12. Mrs H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs H provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs H for completeness.
13. SPPA accepted the Adjudicator's findings.

Ombudsman's decision

14. Mrs H feels that the compensation proposed is "paltry" and does not compensate her for the distress and inconvenience she suffered. All plans were made with her retiring

at 55 in mind but this will no longer happen – although Mrs H can retire from 55 the pension would be actuarially reduced.

15. Mrs H says that the loan from her parents might be on preferential terms but this does not mean that her parents can afford to wait for the loan to be repaid much later than she intended. Further Mrs H says she could have paid instalments to her parents rather than make mortgage overpayments.
16. Mrs H adds that whilst the building works started in October 2015, the planning for the work itself started in 2014, while she believed that she could retire at 55.
17. It is my determination that SPPA's mistake was maladministration.
18. Mrs H joined the Scheme in 2001 and did not have pre-existing special class membership in 1995. Therefore, according to the Regulations (see appendix, she should not have been told that she was entitled to special class membership.
19. Mrs H can only receive the pension benefits to which she is entitled . As she cannot exceed her entitlement I will not make directions that grant her unreduced pension benefits from 55 on special class basis.
20. SPPA told Mrs H in August 2015 that they had made a mistake. While Mrs H may have planned for building works from 2014, she still had an opportunity to reconsider her decision to proceed with the building works in October 2015. She also had a choice whether to overpay her mortgage.
21. Had she reconsidered her plans, she would have been able to repay the monies borrowed from her parents and her parents would not have been inconvenienced. Mrs H decided to proceed with the building works knowing that she was not eligible to retire from 55 with an unreduced pension and would not be able to repay the loan as originally planned. ..While I accept that her original plans were made on the basis of the misstatement, Mrs H made a decision to proceed with the building works with full knowledge of the correct pension entitlement. I am not persuaded that she reasonably relied on the incorrect statement when she took the decision to proceed.
22. While I do not think Mrs H has suffered any financial loss as a result of the maladministration, I do think that SPPA have caused Mrs H significant distress and inconvenience.
23. Turning to the amount of compensation, when making awards for distress and inconvenience, my role is not to penalise providers but to provide a remedy for non-financial injustice in so far as money can do it. The level of compensation is meant to recognise the distress and inconvenience Mrs H suffered after discovering that she could not in fact retire at 55 with an unreduced pension. It is not intended to put her in the position she would have been in had she had that right. SPPA raised Mrs H's expectations over a period of time and it must have been extremely distressing for Mrs H to have them disappointed. In those circumstances I consider that £750 is appropriate.

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24. Therefore, I uphold Mrs H's complaint and make the direction below.

Directions

25. Within 21 days of this Determination SPPA will pay Mrs H £750 as compensation for the distress and inconvenience she suffered.

Karen Johnston

Deputy Pensions Ombudsman
16 September 2016

Appendix

The National Health Service Superannuation Scheme (Scotland) Regulations 1995

R2.—(1) Subject to paragraph (2) this regulation applies to a member—

(a) who, at the coming into force of these Regulations—

(i) is in pensionable employment as a nurse, physiotherapist, midwife or health visitor, or

(ii) has accrued rights to benefits under the scheme arising out of a previous period in which the member was engaged in such employment and at no time since the last occasion on which the member was so engaged has had a break in pensionable employment for any one period of 5 years or more, and

(b) who spends the whole of the last 5 years of pensionable employment as a nurse, physiotherapist, midwife or health visitor