

Ombudsman's Determination

Applicant	Mr Y
Scheme	Scottish Teacher's Superannuation Scheme (the Scheme)
Respondent	Scottish Public Pensions Agency (SPPA)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by SPPA.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y complains of the financial loss he says he has suffered, as a result of having entered SPPA's 'winding down employment arrangement' (the **arrangement**), which he says is not fit for purpose.
4. Mr Y is unhappy that the final pensionable salary used for calculating his retirement benefits was the lower salary he received 365 days prior to entering the arrangement. Mr Y says this is unfair as it does not preserve the true value of his pension benefits for service he accrued prior to entering the arrangement. He claims his lower salary should only be used for the two year period in which he was in the arrangement.

Background information, including submissions from the parties

5. Mr Y had been a member of the Scheme since August 1976, on a full time basis. In 2013, when Mr Y was aged 58, he considered and subsequently applied to enter the arrangement. His Normal Retirement Date (**NRD**) was dd month year (age 60).
6. The arrangement allows for a 'phased retirement', meaning that members who are approaching their NRD, have the opportunity to continue in employment, on a part-time basis, but with the benefit of each year of service being counted as one complete year for the purpose of pension benefits.

7. A Factsheet was available to Mr Y containing information about the arrangement. It said the arrangement allowed members “the opportunity to continue in employment on a part-time basis whilst protecting their overall final retirement pension entitlement”.
8. The ‘benefits’ section of the Factsheet said:
 - “each year of service under the part-time contract will count as one full year for pension benefit calculation purposes;
 - the final pensionable salary, for benefit calculation purposes, will be the salary that you received in the 365 days prior to entering winding down employment, index-linked, to the actual point of retirement;
 - the contributions both you and your employer pay are based on the actual salary you receive for the part-time post”.
9. The relevant statutory provisions are set out in the Teachers’ Superannuation (Scotland) Regulations 2005, Regulation J2 (eligibility) and E34(15) which states:

‘Where a teacher has spent his or her last 365 days of pensionable salary service employed in part-time service under regulation J2, that teacher’s pensionable salary shall be calculated by reference to his or her salary for the last 365 days prior to commencement of his or her winding down employment under regulation J2...’
10. Mr Y’s application was accepted, and his phased retirement began on 12 August 2013. His salary on entering the arrangement was £34,324 per annum.
11. It was not until after Mr Y retired and began receiving his benefits from the Scheme, in September 2015, he became aware that his benefits were lower, in comparison to the pension he had accrued previously, prior to entering the arrangement. The crux of Mr Y’s dissatisfaction is that the arrangement was promoted and continues to be promoted as a way to protect preserved benefits, and that there were no warnings in the Factsheet highlighting the inherent dangers of entering the arrangement.
12. Ultimately, what Mr Y would like is for his previous pension expectations, prior to entering the arrangement to be restored. In his view the lower salary should only apply for the two years he participated in the arrangement, and should not apply to his entire length of service.
13. Mr Y’s dispute was considered by SPPA, through the first stage of its Internal Dispute Resolution Procedure (**IDRP**). Mr Y contends that SPPA should have known, or been able to predict, the difference in his winding down salary and the average of the best 3 out of the last 10 years’ salary, which would have been used had he not entered the arrangement, was around £4,000 to his detriment. Therefore, Mr Y asked for his final pensionable salary to be re-evaluated. SPPA did not uphold the complaint, explaining

the correct final pensionable salary has been used to calculate his retirement benefits in accordance with the arrangement and regulations under the Scheme.

14. SPPA explained that the calculation of his retirement benefits used Mr Y's pensionable salary received during the period 12 August 2012 to 11 August 2013, which was £34,324. This was in line with the Factsheet and Regulation E34(15) of the Teachers' Superannuation (Scotland) Regulations 2005.
15. SPPA accepted that "the literature available at the time did not make it clear that it is not always beneficial for members to enter winding down employment, and the website, factsheet and member's guide have since been updated". But, Mr Y's application for winding down employment was accepted after meeting the required criteria and it was processed according to his wishes. SPPA also said the Scheme Regulations do not contain a provision for winding down applications to be revoked, and confirmed that Mr Y was in receipt of the correct pension benefits.
16. Mr Y pursued the matter further via the second stage of the IDRP. He felt strongly that a provision ought to be made to restore those pensions to a value that rightfully reflects the length of service, and the contributions made based on his higher final pensionable salary.
17. SPPA's IDRP stage 2 letter of 27 April 2016, explained why the complaint was not upheld, in particular, drawing Mr Y's attention to the fact that a teacher's salary prior to entering the arrangement is usually their highest salary, which is inflation proofed up to the point of retirement by using changes in the Consumer Pricing Index. SPPA explained "those benefits can be reduced when comparing what pension could have accrued using a pensionable salary of the average of the best 3 years out of the last 10 where during that period price inflation had been significantly higher and where the teacher chooses a relatively small reduction in hours; thus not significantly benefitting from the additional service awarded under winding down".
18. Because Mr Y did not accept SPPA's explanations, he referred the issue to us.

Adjudicator's Opinion

19. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by SPPA. The Adjudicator's findings are summarised briefly below:
 - It is not for this organisation to decide whether the arrangement being complained about is fit for purpose. The role of this organisation was to ensure that SPPA had calculated Mr Y's benefits correctly, and in line with the Scheme Regulations.
 - The Factsheet did not explain the advantages and disadvantages of entering the arrangement, but each individual must make their own decision to enter the arrangement based on their own circumstances.

- It was accepted that had Mr Y not entered the arrangement, but gone part-time for two years in the main Scheme, it is possible he would have received a higher pension award at NRD.
 - SPPA applied the correct final pensionable salary when calculating Mr Y's pension benefits, which is in line with the Regulations of the Scheme. Therefore Mr Y is in receipt of the correct retirement benefits.
20. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome in my view. In summary, he said:
- His pension provision should be restored to the pension he was expecting to receive prior to his entry into the arrangement. And, that his salary of £34,324 ought to apply to only two years of him being in the winding down arrangement;
 - What is the effect of inflation being significantly higher?
 - There was no indication he should contact SPPA, and he could not have known that something was amiss in the information provided by SPPA. The Factsheet was less than satisfactory because it gave no warnings to the inherent dangers of the arrangement;
 - He considered he had paid more than others for level of benefit he was receiving and was seeking a pension that was commensurate with his length and time of service;
 - He questioned whether the SPPA were saving money through such an arrangement, and how much SPPA had saved as a result?
21. After having considered the matter, I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

22. Mr Y's frustration stems from his belief that he was expecting his previous pension benefits, prior to entry into the arrangement, to have been safeguarded from decreasing in value - i.e. his pension would be preserved for the service prior to entering the arrangement. Mr Y feels that the pension he is in receipt of does not accurately reflect his 38 years of service. He wants SPPA to recalculate his benefits, and only use his £34,324 salary for the two years he was in the arrangement. He says this is the only way to preserve his earlier pension benefits.
23. Unfortunately, for Mr Y this is not the way that the arrangement works. It allows for full time employees to reduce their hours (with employer consent), and each year of service under the part-time contract then attracts a full year's pensionable service. However, the final pensionable salary used in the benefit calculation, is the salary

received in the 365 days prior to entering the winding down arrangement, which is index linked to the member's actual date of retirement. This is quite clear in the Factsheet provided to Mr Y in 2013.

24. I have to bear in mind that the change in the way that his final salary was calculated came about because of a choice made by Mr Y. The decision Mr Y made in 2013, was one which he made based on the information given to him by SPPA. Although that information did not contain a warning that entering the arrangement may not be beneficial in all cases, there can be no ambiguity as to what final pensionable salary would be used in the calculation of his retirement benefits. The factsheet did not purport to explain existing entitlements which would have been set out in the general member guide. The factsheet refers to 'protecting full time service' but does not make any promise to protect an existing final salary entitlement. The additional information which is now given in the factsheet is helpful because it reminds members to consider the way that pensionable pay is calculated if they are not winding down. However, I am satisfied that the factsheet which Mr Y received did not contain any misleading representation about the way that pensionable pay would work if he did decide to enter winding down.
25. Mr Y is only entitled to receive the benefits he has accrued under the Scheme Regulations. In this case, he entered into the arrangement in full knowledge that his pensionable salary of £34,324 would be used to calculate his pension award. Therefore, I am satisfied that Mr Y is in receipt of his correct benefits calculated in accordance with the winding down arrangement.
26. Therefore, I do not uphold Mr Y's complaint.

Karen Johnston
Deputy Pensions Ombudsman
9 March 2017