

Ombudsman's Determination

Applicant	Mrs L
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Strathclyde Pension Fund (SPF) Scottish Public Pensions Agency (SPPA)

Outcome

1. Mrs L's complaint is partially upheld against SPF, the administrators of the Scheme, but not against SPPA. To put matters right, SPF should pay £2,000 compensation to Mrs L for the significant non-financial injustice she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs L's complaint is that SPF provided incorrect information to her late husband Mr L, prior to his early retirement in 1993, regarding the basis of the potential widow's pension that would be payable. Mrs L has now discovered that she is not entitled to 50% of Mr L's pension as she had expected.

Background information, including submissions from the parties

4. Mr L was a member of the Scheme and his 60th birthday was on 29 November 1993.
5. Mrs L says that, in early 1993, it was clear that there would be a reorganisation of Strathclyde Council, and it had been Mr L's intention to retire when this was implemented.
6. In March 1993, Mr L was offered voluntary early retirement. Mr L's manager arranged for Mr L to meet with an adviser from SPF (the **March 1993 Meeting**). In the subsequent supporting statement provided by Mr L's manager to Mrs L, he said "detailed...discussions took place surrounding the financial implications of any [early retirement] offer". He said that of particular importance in such discussions, was the potential effect on future pension arrangements for the individuals concerned and for their dependents. It should be noted that he was not present at the meeting.
7. At the time, Mr and Mrs L were not married but had been living together for several years. Mr L was also going through a divorce with his first wife, from whom he had

been legally separated since 1989. In view of this, Mrs L says that Mr L wanted to be assured that their not being married would not impact his pension entitlements.

8. During the March 1993 Meeting, Mrs L says that SPF informed Mr L that, for Mrs L to be eligible for a widow's pension, he just had to ensure that they were married before he died. No mention was made of a reduced widow's entitlement in the event of marriage after retirement. This is the main point of Mrs L's complaint.
9. Mr L accepted early retirement on 5 April 1993, having been a member of the Scheme for over 30 years. He was awarded compensation added years, for premature retirement, of 5 years and 236 days (the **Compensation**).
10. On 17 December 1993, Mr L's divorce from his first wife was finalised.
11. In April 1995, following a bereavement in Mr L's immediate family, Mr and Mrs L got married. Mrs L says that he reminded her that they had no control of mortality and, as he was 15 years older than her, he would likely die before her. He also wished to ensure that she would receive half of his pension.
12. On 22 February 2002, Mr L wrote to SPF asking for an estimate of "the pension payment that would be available to my wife should I die...Our date of marriage is after the date of my retirement..."
13. SPF replied on 20 March 2002 (the **March 2002 Letter**), providing details of the pension that would have been payable to Mrs L. The scheme explained that this letter erroneously included the Compensation within its calculation.
14. This meant that, in the March 2002 Letter, SPF had overstated the pension that would be payable to Mrs L.
15. Although the March 2002 Letter was correctly addressed, and SPF says that it was not returned, Mrs L says that she is certain that they did not receive it.
16. Mr L passed away in November 2013.
17. On 25 November 2013, Mrs L informed SPF of Mr L's death. On 3 December 2013, SPF wrote to Mrs L with details of the widow's pension payable to her. Unfortunately, the figures quoted were again incorrect.
18. In December 2013, Mrs L questioned the calculation of the pension being paid to her.
19. In September 2014, SPF realised that Mrs L was not entitled to a widow's pension for the Compensation element of Mr L's pension. On 11 September 2014, SPF wrote to Mrs L to inform her that her pension in payment would be reduced by £4,167.17. An overpayment of £4,597.82 had accrued, but SPF decided not to seek recovery of the overpayment.
20. Mrs L says that she had expected to receive 50% of Mr L's pension as her widow's pension. She asserts that all their financial planning had been based on the belief that this was her entitlement. In particular, Mrs L has provided testimonials attesting

to Mr L's belief, especially in the months prior to his death, that she would be taken care of financially due to her entitlement to a widow's pension.

21. At the time of Mr L's retirement, the applicable regulations were the Local Government Superannuation (Scotland) Regulations 1987 (the **1987 Regulations**).
22. The relevant provisions of the 1987 Regulations are at Appendix 1. These state that where a "post-retirement marriage" takes place, only the 'contracted-out' portion of the member's service would be used in calculating the widow's pension.
23. In 1998, The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (the **1998 Regulations**) created additional entitlements for post-retirement marriage partners in certain cases. Specifically, Regulation 33 of the 1998 Regulations allows the Compensation to be taken into account in the calculation of a widow's pension, as long as the marriage took place after 25 July 1996.
24. Mr and Mrs L got married two years after Mr L's retirement, so there was a "post-retirement marriage", but before 25 July 1996, so the 1998 Regulations did not assist. Instead of receiving 50% of Mr L's pension, Mrs L says she is presently receiving about 20%, which is £11,035 a year. Therefore, Mrs L has asserted that this difference in pension is her financial loss.
25. Mrs L's position is that, had Mr L been given the correct information, specifically about the effect of a post-retirement marriage, they would have done a number of things differently; Mr L would have delayed his retirement and they would have married before he retired. She said that she would not have given up full time work in 1996, so that she could spend more time with Mr L. In addition, Mrs L said that they had made the decision to buy an apartment in 2005. Mrs L has been unable to carry on paying for the property and she has now accepted an offer to sell the apartment.
26. During the investigation of Mrs L's complaint under the LGPS' internal dispute resolution procedure (**IDRP**), consideration was given to whether Mr and Mrs L met the requirements of 'cohabiting partners' at the time of Mr L's retirement. It was acknowledged that Mr and Mrs L were living together and were financially interdependent before their marriage. Another condition that had to be satisfied was that both parties had to be "able to marry". As Mr L was not divorced at the time of his retirement, he was not able to marry. Consequently, they did not meet the requirements of cohabiting partners at the time of Mr L's retirement.
27. In SPPA's second stage decision under the IDRP, it said:

"It is clear that [SPF] have given wrongful advice on several occasions including the assessment of the amount of pension Mrs [L] was entitled to receive. Whilst we have every sympathy for her situation, the Scottish Ministers have concluded that, as the Regulations have been correctly applied in this case, they must dismiss this appeal on those grounds."

28. In its formal response to Mrs L's complaint to the Ombudsman, SPPA accepted that the evidence submitted by Mrs L clearly showed that financial planning had been important to her and Mr L. SPPA said although "the terms of [the March 1993] meeting cannot be proven, the Scottish Ministers believe that the essential facts of this case would appear to amount to maladministration, on the part of [SPF], for providing erroneous information". It accepted that Mr L had left the meeting in 1993 believing that the date of his proposed marriage was not a material concern. But SPPA did not accept that maladministration or misdirection took place in 1993.
29. In its formal response to Mrs L's complaint, SPF accepted the finding of maladministration by SPPA regarding the March 2002 Letter and the overpayment of Mrs L's widow's pension. Accordingly, SPF says that it is prepared to offer an ex gratia payment of £2,000 to Mrs L, for the distress and inconvenience caused to her by these errors.

Adjudicator's Opinion

30. Mrs L's complaint was considered by one of our Adjudicators who concluded that further action was required by SPF. The Adjudicator's findings are summarised briefly below:
- It seems clear that the March 1993 Meeting took place, however, there is no evidence that Mr L was misled during it. There is also insufficient evidence that Mr L was told that the timing of his marriage to Mrs L was irrelevant, as long as it occurred prior to death. The fact that the March 1993 Meeting took place, is not evidence enough that Mr L was misled during it
 - The 1987 Regulations clearly make a distinction between pre and post retirement marriages. Mr L's letter of 22 February 2002 to SPF, draws attention to this distinction, which indicates that he was aware of the difference in calculating the widow's pension payable to Mrs L and that she would be treated differently had the marriage been pre-retirement.
 - Mrs L is receiving the benefits she is entitled to from the Scheme, in accordance with the relevant provisions of the regulations governing it. Although there has been no financial loss, she has suffered a significant non-financial injustice as a result of the actions of SPF.
 - SPF provided incorrect information in the March 2002 Letter and overpaid Mrs L's widow's pension. These errors amount to maladministration by SPF. Mrs L is therefore entitled to compensation for the significant distress and inconvenience that has been caused to her. The decision to waive the overpayment, and to make the offer of £2,000, is the appropriate action for SPF to take in the circumstances.
 - SPF should pay £2,000 to Mrs L for the significant non-financial injustice she has suffered.

31. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs L 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 L for completeness.

Ombudsman's decision

32. Mrs L acknowledges that there is no written record of the March 1993 Meeting, but says that she has provided circumstantial evidence to show that Mr L was misled during it. She says that Mr L's manager was aware of their marital status and knew that Mr L intended to ask SPF about her entitlement. She says that Mr L was not given written advice about the Scheme rules when he retired. Mr L wrote to SPF in February 2002 to provide them with a marriage certificate and to obtain confirmation that she was entitled to a widow's pension. She says that the voluntary early retirement exercise began in 1993 and continued until 1996. Mr L agreed to bring his retirement forward so that his salary could be removed from his employer's budget from April 1993. She says that Mr L made the enquiry about the level of her entitlement in 2002 because a friend had told him that there had been changes to legislation in 1998.
33. I have taken account of Mrs L's comments and the testimonials provided. Like the Adjudicator, I believe that she has given as accurate an account as she can recollect. However, the available evidence, while helpful and plausible, is insufficient for me to reach a finding of misdirection by SPF during the March 1993 Meeting.
34. I accept that the March 1993 Meeting was convened to discuss the financial implications of the voluntary early retirement offer and associated pension arrangements. I accept that the effect of Mr and Mrs L's marital status on future pension entitlements for Mrs L was on their minds and likely to have formed part of that discussion. I also accept that when Mr L came away from the meeting he said that they 'just had to make sure that they were married before he died'. I am satisfied that Mr L believed there was no need to delay his retirement until after his remarriage.
35. However, to uphold Mrs L's complaint I need find evidence of a clear and unequivocal statement that the timing of their marriage would make no difference to the level of her entitlement to a widow's pension. I cannot see any evidence of such a statement. I have found it impossible to reconstruct what exactly Mr L was told about the level of benefit which would be available to his widow, specifically whether the conversation got down to detail about what counted as contracted out employment under Reg E6(4) and whether any award of Compensation would be included or not..
36. In February 2002, Mr L wrote to SPF to obtain an estimate of the pension that would be payable to Mrs L, enclosing detail of their post retirement marriage. In that letter he did ask about level of entitlement. The answer given to that enquiry was plainly wrong. SPF explained that this was because the writer of the letter had counted in Compensation which should have been excluded. I have considered whether this is

proof that the scheme must have given similar incorrect information in 1993, but I cannot conclude that it is. There is simply no information available about the conversation which took place in 1993.

37. Mrs L says that the March 2002 Letter from SPF was not received so they did not rely upon that when making their plans. There is also no evidence that Mr L followed up for a response. On balance, as the March 2002 Letter was correctly addressed, it is my view that it would have been delivered. However, that is not to say that Mr and Mrs L read it - for example, it could have been mixed up in other unread mail which had accumulated while they were abroad.
38. Mrs L makes the point that Mr L did not have to accept the offer of voluntary early retirement in April 1993, and he could have delayed acceptance until after they were married. I accept that this was a possibility but I cannot find that he reasonably relied on anything incorrect which was said to him in 1993 when making this decision, because there is no evidence of what was in fact said.
39. Therefore, I partially uphold Mrs L's complaint.

Directions

40. Within 21 days of the date of this determination, SPF should pay £2,000 compensation to Mrs L for the significant non-financial injustice she has suffered.

Karen Johnston

Deputy Pensions Ombudsman
20 July 2017

Appendix 1

The Local Government Superannuation (Scotland) Regulations 1987, SI 1987/1850 (S.128)

E5 Entitlement to widow's short-term and long-term pensions

(1) If at the time of his death a man-

(a) was entitled to receive payments in respect of a retirement pension, or

...

and he leaves a widow or widows she is, or as the case may be they are jointly, entitled, subject to paragraphs (1A) and (3) to (7), to a widow's short-term pension for 3 months after his death or, if the death occurs after 5th April 1988 and the widow has one or more eligible children in her care, for six months after his death and then to a widow's long-term pension.

(4) A widow is not entitled to any pension by virtue of paragraph (1) (a) or (b) or paragraph (2) if-

(a) she was not her husband's wife at some time while he was in local government employment after 31st March 1972 and before the date on which he became entitled to a retirement pension, ...

(5) Where but for paragraph (4)(a) a widow would have been entitled-

(a) under paragraph (1) to a widow's short-term pension and to a widow's long-term pension, or

(b) under paragraph (2) to a widow's long-term pension,

she is entitled, where sub-paragraph (a) applies to a short-term pension and a long-term pension and where sub-paragraph (b) applies to a long-term pension only, calculated in each case in accordance with regulation E6(4).

E6 Amount of widow's short-term and long-term pensions

(4) Where regulation E5(5) (post-retirement marriages) applies-

(a) the references in paragraphs (1)(a), (2)(a), (d) (e) and (f), and the second reference in paragraph (1)(c)(i), to the retirement pension are to be construed as references to, and

(b) for the purposes of paragraph (1)(c)(ii), any annual rate at which the retirement pension was payable is to be taken not to have exceeded the rate of,

the part of the pension attributable to the whole period of his service in respect of which the pension was payable which was in contracted-out employment.

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (the Regulations).

Regulation 20 Entitlement to surviving spouse's or civil partner's short-term and long-term compensation

- (3) “If the marriage or formation of the civil partnership with the deceased took place after the material date, a surviving spouse or civil partner is only entitled to receive surviving spouse's or civil partner's short-term or long-term compensation if he is entitled to a surviving spouse's or civil partner's pension under the LGPS Regulations or the Benefits Regulations...”

Regulation 33 Retrospective effect in certain cases

“If the material date in respect of any person is before the date when these Regulations come into force and the person is credited with an additional period of service under regulation 8, regulations 9 to 32 and, so far as relevant, Parts I and VII shall have effect in respect of that person from the material date: Provided that regulation 20(3) shall not have effect from a date earlier than 25th July 1996.”