

## Ombudsman's Determination

Applicant	Mr N
Scheme	Police Pension Scheme ( <b>the Scheme</b> )
Respondent	Scottish Public Pensions Agency ( <b>SPPA</b> )

## Outcome

1. I do not uphold Mr N'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 N retired on ill-health grounds, and says he was assured that his pension would be enhanced up to the age of 60. But, when he received the relevant documentation he found he was not entitled to an enhancement.

## Background information, including submissions from the parties

4. Mr N became a member of the Scheme on 11 February 1997, and retired on 8 April 2016, at age 58. Mr N also transferred a previous pension which credited him with 8 years and 267 days' service.
5. On 30 March 2016, SPPA received notification from Mr N's employer that he would be retiring due to ill-health. SPPA sent details of the benefit statement to Mr N with communication details. Mr N contacted SPPA on 4 April 2016, and asked why there was no enhancement included in his pension award. Because, he says, he was told that his pension would be enhanced to the full 30 years, even though he was retiring at age 58. Mr N was told that because he was over the Scheme's voluntary retirement age of 55, his benefits would not be enhanced.
6. Mr N completed all the relevant forms on 11 April 2016, and his pension was processed effective from 8 April 2016. At the point of retirement Mr N had accrued a total of 27 years and 325 days of pensionable service. Under the scheme regulations each year of service in excess of 20 years counts double, with the result that Mr N's pension was calculated on the basis of 35 years 285 days service.

7. On 22 August 2016, Mr N enquired again why no ill health enhancement was being added to his pension. SPPA sent an email and explained that no enhancement was payable as Mr N was over age 55 and so eligible to retire. SPPA confirmed this was in line with the Police Pensions Regulations 1987 (**the Regulations**).
8. Mr N took his complaint through the Scheme's internal dispute resolution procedure (**IDRP**) arguing that the reason given to him was discriminatory. He said he thought the Regulations did not comply with the Equality Act 2010, and had not been amended to follow the Compulsory Retirement Age (**CRA**) being changed to age 60 from age 55.
9. At IDRP 1 SPPA explained that members can retire at 55 without incurring a reduction of pension. As Mr N was over the scheme's voluntary retirement age when he retired due to ill health, no enhancement was applicable. Whilst it is recognised that if it wasn't for Mr N's ill health, he could have continued to serve until he reached age 60, he wasn't required to do so as he had already reached the scheme's Voluntary retirement age (VRA). The Compulsory Retirement Age (CRA) applicable to the ranks of constable and sergeant were amended from age 55 to 60 with effect from 1 October 2006. As part of that change, protections were agreed that allowed members who remained in that rank to retire at their pre October 2006 CRA, which in Mr N's case was 55.
10. SPPA also explained that 'the difference in treatment here involves a proportionate means of achieving the legitimate aim that there should be an appropriate enhancement in the case of a person who is because of ill health, prevented from serving until voluntary retirement age. '
11. In the stage two IDRP decision letter SPPA explained that ill-health retirement pensions are for members who become permanently unable to carry out their duties due to ill-health. An ill-health pension can be enhanced to compensate for the loss of opportunity of serving until a particular retirement age. As the Scheme does not have a normal retirement age the enhancement applied is up to the CRA. Some CRA's were amended from age 55 to 60 with effect from 1 October 2006. In order to ensure that existing members were not disadvantaged by the new arrangement members such as Mr N were provided with a voluntary retirement age of 55. This meant they could work past age 55 (his original CRA) and his pension could not therefore be enhanced. To quote their letter of 7 March 2017, SPPA said the following:

"6.4 It is noted and agreed that the Equality Act 2010 lists age as a protected characteristic...

7.1 As previously stated, the PPS regulations were amended on 1 October 2006 to reflect the new CRA. However, as part of that change protections were agreed that allowed members who remained in that rank to retain that date for retirement purposes. These protections were discussed and consulted on with the Police Negotiating Board and aimed to ensure that members who remained in the same rank after 1 October 2006 were not affected by this change...

7.3 Whilst I recognise your contention that but for ill-health you would have continued to serve beyond your VRA of 55, you were not required to do so and you could have claimed an award under the scheme regulations from that age as a result of the protections provided when CRAs were changed in 2006. In accordance with the above paragraphs and the regulations of the scheme I determined that your pension and lump sum have been correctly calculated by the SPPA.”

12. Mr N remained dissatisfied and requested that his complaint be independently reviewed by the Pensions Ombudsman.

## Adjudicator's Opinion

13. Mr N'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:

- The Regulations (as an appendix to the determination) provide, under section A4(4)(b), that the voluntary retirement age is 55, this meant that Mr N had the option to retire at age 55, but he could continue to work until he reached age 60 if he wished.
- Part B3(3) of the Regulations provide that a policeman who has accrued two years' of pensionable service is entitled to apply for an ill-health pension. Mr N had built up more than two years' of pensionable service so this meant he is eligible to apply for an ill-health pension.
- However, the Regulations also provide, under Part III schedule (b), that enhancements may only be applied up to the voluntary retirement age. In Mr N's case this was age 55 and so no enhancement needed to be applied as Mr N left service at age 58.
- SPPA have a duty to pay benefits in line with the Regulations that govern the Scheme. SPPA have not done anything wrong in how it has interpreted and applied the Regulations.
- There is no evidence to suggest that Mr N is not being treated the same as any other police officer in the same position as he is.

14. SPPA accepted the Adjudicator's opinion and did not make any further comments.

15. Mr N did not accept the Adjudicator's Opinion and made the following comments:

- He was told that his benefits would be fully enhanced when he left employment on ill-health grounds; and
- It was through an enquiry to the Equality Advisory Support Service (**the EASS**) that led him to believe he had a case for age discrimination, under the Equality Act 2010. He draws a comparison with an officer aged 53 when he

retired due to ill health, who was also two years short of a full thirty years service, and entitled to a VRA of 55. He asserts that the officer's pension would have been enhanced. He has therefore been treated differently to how other police officers, with the same circumstances as his, would have been treated.

16. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

### **Ombudsman's decision**

17. Mr N is complaining that SPPA will not enhance his benefits up to age 60, when he retired on ill-health grounds at age 58.
18. Mr N says that he was informed by a colleague in a meeting that his ill-health pension would be enhanced to age 60. There is no evidence to support Mr N's assertion but even if he was given incorrect information about the enhancement he can only have suffered a loss of expectation in relation to the amount of pension he would receive. He cannot argue that he based a decision to retire on that information as he was retiring due to ill-health.
19. The Regulations are clear that Mr N is not entitled to have his benefits enhanced to age 60. This is because when he joined the police force he had a CRA of 55. When the CRA was changed to age 60, police officers in Mr N's position were given the option to retire at age 55 or continue until, at the latest, age 60. The pre-2006 CRAs were retained (renamed VRAs) as the cut off point for the hypothetical future service used in calculating ill health pensions. SPPA explained that the amendments which introduced the VRA were intended to preserve all the rights of officers in Mr N's position at the point when they reached age 55. Consequently it was considered there was no need to move the CRA for hypothetical future service to age 60.
20. In line with the Regulations when Mr N retired on ill-health grounds at age 58. He had worked passed his original CRA of age 55 and so his benefits could not be enhanced. When Mr N retired he was credited with 35 years and 285 days which included his transfer in and double accrual for service after 20 years. It is common ground that Mr N had a right to retire with an ordinary pension at 55. The scheme has explained that when Mr N reached 55 he had 29 years and 195 days service ie 29.5432/60ths. I am satisfied that the Regulations provide him with ill health protection up to that level of accrual, but not beyond.
21. Mr N has said that he was provided with information from the EASS, which led him to believe he had a valid age discrimination case. Mr N has described a potential situation which, he says proves that he has been treated differently to how another member might have been treated. Mr N would have a valid claim if he could show

that he had been treated less favourably than others whose circumstances are the same as his.

22. I am not persuaded that the comparison put forward by Mr N demonstrates that the Regulations discriminate on the grounds of age. They cut off ill health protection at the point when an officer is entitled to retire with whatever accrual he or she had at that point. The hypothetical 53 year old officer Mr Lennon argues for is not, age apart, in an identical position to him because that officer had greater accrual than Mr Lennon in fact had at age 53 and would also have had greater accrual at the age of 55 when first entitled to retire.
23. I am satisfied that the pension was awarded according to the scheme Regulations and from the comparator put forward cannot be satisfied that Mr N has been unfairly treated because of his age.
24. Therefore, I do not uphold Mr N's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
27 November 2017

**Appendix**

**The Police Pension Scheme Regulations 1987**

**A4 Meaning of certain expressions and references - general provisions**

(1) In these Regulations, unless the context otherwise requires-

(a) the expressions contained in the glossary set out in Schedule A shall be construed as therein provided;

(b) any reference to a member of a police force, however expressed, includes a reference to a person who has been such a member;

(c) any reference to an award, however expressed, is a reference to an award under these Regulations.

(2) In these Regulations, unless the context otherwise requires, a reference to a Regulation or a Part shall be construed as a reference to a Regulation contained in these Regulations or a Part thereof, a reference to a Schedule shall be construed as a reference to a Schedule to these Regulations, a reference to a paragraph shall be construed as a reference to a paragraph in the same Regulation or, as the case may be, the same Part of the same Schedule or the same Section thereof and a reference to a sub-paragraph shall be construed as a reference to a sub-paragraph contained in the same paragraph.

[Ed note: Paras (3)-(6) below extend to England and Wales only.]

(3) In these Regulations, a reference to a regular policeman's relevant voluntary retirement age shall be construed in accordance with paragraphs (4) to (6).

(4) In relation to a regular policeman who is not a member of the metropolitan police force or an overseas policeman, that reference shall be construed as a reference to-

(a) where he is a superintendent or inspector, the age of 60 years;

(b) where he is a sergeant or constable, the age of 55 years.

(5) In relation to a regular policeman who is a member of the metropolitan police force that reference shall be construed as a reference to-

(a) where he is the commissioner, deputy commissioner or an assistant commissioner, the age of 60 years;

(b) where he is a deputy assistant commissioner or commander, the age of 57 years;

(c) where he holds any lower rank, the age of 55 years.

**B3 Policeman's ill-health award**

(1) This Regulation shall apply to a regular policeman who retires or has retired on the ground that he is or was permanently disabled.

Provided that this regulation shall not apply to a regular policeman by whom pension contributions were not payable under regulation G2(1) during the period immediately preceding his retirement or to a regular policeman who under regulations G7 and G8 is ineligible for a pension award payable on the ground of permanent disablement .

(2)A regular policeman to whom this Regulation applies shall be entitled to an ill-health award as hereinafter provided.

(3)In the case of a policeman who is or was at the time of his retirement-

(a)entitled to reckon at least 2 years' pensionable service, or

(b)disabled as the result of an injury received in the execution of duty,

the award under paragraph (2) shall be an ill-health pension calculated in accordance with Part III of Schedule B, subject however to Parts VII and VIII of that Schedule.

(4)In the case of any other policeman the award under paragraph (2) shall be an ill-health gratuity calculated in accordance with Part IV of Schedule B.

### **Part III Schedule B**

5 (1) In the case of a policeman who, had he continued to serve until he attained his relevant voluntary retirement age or, where he would not have a relevant voluntary retirement age, until the age of 65, would have become entitled to an ordinary or short service pension, a pension calculated in accordance with paragraph 3 or 4 or the formula in paragraph 4A or 4B should not exceed the pension to which he would so have become entitled calculated, however, by reference to the average pensionable pay by reference to which the ill-health pension is calculated.