

Ombudsman's Determination

Applicant	Mr E
Scheme	The Police Pension Scheme (Scotland) (the Scheme)
Respondent	Scottish Public Pensions Agency (SPPA)

Outcome

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

Complaint summary

3. Mr E has complained that he is not able to receive a refund of his contributions, on leaving the Scheme.

Background information, including submissions from the parties

4. On 25 May 2015, Mr E joined Strathclyde Police Force and became a member of the Scheme. At that time, he was provided with a copy of the Scheme Guide.
5. On 3 May 2017, Mr E telephoned the SPPA to enquire about opting out of the Scheme and receiving a full refund of contributions. An opt out form was issued to Mr E on the same day.
6. Mr E completed the relevant sections of the opt out form and sent these to the SPPA and his employer; he dated the forms 3 May 2017. Mr E's employer completed the relevant sections of the forms and put his date for leaving the Scheme as 31 May 2017.
7. The SPPA received two sets of forms. One which was incomplete and only included the sections filled in by Mr E, received on 5 May 2017. The fully completed form that had also been completed by Mr E's employer was received by the SPPA on 5 June 2017.
8. Mr E was informed that as he officially joined the Scheme on 25 May 2015, and as his payroll department had opted him out from the day of the next pay period, i.e. 31

May 2017. He had paid just over two years of pension contributions, and was not eligible for a refund under the rules of the Scheme.

9. Mr E was dissatisfied and raised a formal complaint. He said he began exploring the option of a refund on 3 May 2017, and he completed and returned the forms to his employer shortly after this. He believed that since his employer had the forms before 25 May 2017, he should receive a full refund of his pension contributions. Further, he did not consider that it was his fault that the Police Pension Scheme (Scotland) Regulations 2015 (**the Regulations**), ruled that he would only be classed as leaving the Scheme on 31 May 2017.
10. Mr E argued that he had not been provided with enough information to make an informed decision. He also considered the website was not detailed enough as it only put the criteria for receiving a refund as having more than three months and less than two years' pensionable service. It did not specify that the request needed to be made after one year and eleven months, in order to meet the criteria for a refund.
11. The SPPA did not uphold Mr E's complaint and said:

"I conclude that you have accrued more than two years' pensionable service and therefore under the scheme regulations there is no entitlement to a refund of contributions.

The regulations clearly set out when an opt out takes effect. Whilst there is discretion available, this is only permitted by regulation 23(2) which allows for a later pay date for the election to be applicable from. Where, exercised, this discretion only extends the period of member's pensionable service.

The time taken to process your application was immaterial to the date your pensionable service ended. You completed the forms on 3 May 2017, and this section of the form was received on 5 May. As indicated in paragraph 6.2, in order to opt out of the scheme before you had accrued 2 years pensionable service, the scheme manager would have had to receive your election to opt out no later than 30 April 2017. Although the section of the form that SPPA requires to be completed by Police Scotland Payroll was not received until 5 June 2017, your election was processed to be effective from 1 June 2017.

I understand the frustration you must feel given you wished to opt out of the scheme and receive a refund of your contributions. However, I should point out that the estimated capital value of your deferred benefits, as provided by the factor 20 used by [Her Majesty's Revenue and Customs] HMRC to measure the lifetime value of your contributions, which would have been subject to income tax at 20% (representing the tax relief originally applied) had been refunded to you. Your accrued benefits are index-linked to Consumer Price Inflation (CPI), and should you choose to return to the scheme within the next five years they will again be [sic]benefit from in-service revaluation at CPI + 1.25%."

12. Mr E remained dissatisfied and brought his complaint to the Pensions Ombudsman to be independently reviewed.
13. Following this Office's investigation, the SPPA provided a further and more detailed response on 10 April 2018. It explained why Mr E could not receive a refund, saying:

“Whilst it is understood, that Mr [E] exercised his option not to remain a member of the scheme on 4 May 2017, regulation 23(2) states that where this option is exercised 3 months or more after the member's first day of eligible service, the member ceases to be in pensionable service under the scheme “on the first day of the first pay period beginning on or after the date on which the option is exercised”.

The first day of the first pay period following the exercise of the option was 1 June 2017. It therefore follows that Mr [E]'s pensionable service ceased on 31 May 2017, and as his first day of pensionable service was 25 May 2015, he has more than two years' pensionable service, he is not entitled to a refund under the provision of Regulation 166(3)(b)(ii).”

Adjudicator's Opinion

14. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the SPPA. The Adjudicator's findings are summarised briefly below:-
 - The Regulations stated that pensionable service would cease, “on the first day of the first pay period beginning on or after the date on which the option is exercised”. This meant that the SPPA had not done anything wrong in classing Mr E's final day of pensionable service as 31 May 2017. This was because Mr E only made the request to opt out in early May 2017, so he had over two years of pensionable service by 31 May 2017. Therefore, this would always have been classed as his opt out date. As such, he was no longer eligible for a refund.
15. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which in my view do not change the outcome. Mr E said the following:-
 - The website stated that a member is entitled to a refund of contributions if they leave the scheme with more than three months and less than two years of service. He accepts this is correct, but says, had the website explained the time limits involved, then he would not be in the position where a refund is being refused.
 - The SPPA said it would be taking steps to clarify the date at which an opt out election takes effect, in relation to the relevant pay period following the date of election. The fact clarification is needed proves the information available was misleading.

16. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

17. I can understand Mr E is frustrated, because he missed the opportunity to receive a refund of his contributions only by a number of days. However, under Regulation 23(2)(a), where an election is made to opt out of the Scheme, this takes effect, "on the first day of the first pay period beginning on, or, after the date in which the option is exercised". Consequently, at the time Mr E's instruction was processed, he had accrued more than two years' pensionable service in the Scheme. Thus, I am unable to find that Mr E is entitled to a refund of contributions under the Regulations.
18. I also note that Mr E made contributions to the Scheme for two years, so there was sufficient time for him to consider his options and make the decision to opt out and request a refund earlier. I do not believe that the SPPA can be held responsible for him missing the deadline because he waited till the last moment to try and obtain this.
19. Mr E has also complained that the information available on the SPPA's website was misleading, on the basis it said that a person could receive a refund if they had paid more than three months contributions, and less than two years. It did not go into specific detail that in order to receive the refund, the opt out request would need to be made the month before reaching the two-year time limit. In effect, Mr E would have needed to make his election to opt out of the Scheme in April 2017. However, he says the website information did not reflect this.
20. Although, the information on the SPPA's website perhaps lacked the specific detail Mr E wanted, this in itself is not maladministration. The Regulations contain the specific detail and in view of how close he was to the deadline for opting out, Mr E could have telephoned the SPPA for clarification if he did not consider the website sufficiently clear.
21. Further, I cannot conclude that Mr E has suffered an actual loss. Although he is not eligible for a refund of contributions, his accrued pension benefits are valuable (arguably more valuable than a refund of contributions less tax), and will remain in the Scheme until he is able to draw his retirement benefit.. Alternatively, there may be the option for him to transfer his benefits elsewhere if he wishes to do so.
22. The SPPA has acted in accordance with the Regulations that govern the Scheme. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
5 June 2018

Appendix

The Police Pension Scheme (Scotland) Regulations 2015

Option out of this scheme

21.-(1) A person (P) opts out of this scheme in relation to eligible service if P opts not to be an active member of this scheme in relation to that service.

(2) P may only exercise the option under paragraph (1) by written notice to the scheme manager (“opt-out notice”).

(3) The option is taken to be exercised on the date on which the opt-out notice is received by one of the scheme managers.

Opting out after the initial period of eligible service

23. – (1) This regulation applied if-

(a) regulation 22 (opting out before the end of the initial period of eligible service) does not apply; and

(b) a person (P) opts out of this scheme in relation to eligible service-

(i) 3 months or more after P’s first day of eligible service; or

(ii) 3 months or more after P’s automatic re-enrolment date.

(2) If P exercises the option under paragraph (1)(b), P ceases to be in pensionable service under this scheme-

(a) on the first day of the first pay period beginning on or after the date in which the option is exercised; or

(b) if the scheme manager considers that day inappropriate, on the first day of any later pay period the scheme manager considers appropriate.

Pension Schemes Act 1993

Chapter 2 Early Leavers: Cash Transfer Sums and Contribution Refunds 101AA Scope of Chapter 5

(1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 69(3)) if-

(a) his pensionable service terminates before he attains normal pension age, and

(b) on the date on which his pensionable service terminates-

(i) the three month condition is satisfied, but

(ii) but he does not have relevant accrued benefits under the scheme.

(2) For the purpose of subsection (1), the three month condition is that the period of the member’s pensionable service under the scheme, taken together with-

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- (a) any previous period of his pensionable service under the scheme, and
 - (b) any period throughout which he was employed in linked qualifying service under another scheme, amounts to at least three months.
- (3) A period counts for the purpose of paragraph (a) or (b) of subsection (2) only so far as it counts towards qualification for long service benefit within the meaning of Chapter 1.
- (4) For the purpose of subsection (1), “relevant accrued rights to benefit under the scheme”, in relation to a member of a scheme, means rights which-
- (a) have accrued to or in respect of him under the scheme, and
 - (b) entitle him to the relevant benefits which would have accrued to or in respect of him under the applicable rules if paragraph (a), (aa) and (b) of section 71(1) (and the word “and” immediately preceding them) did not have effect.
- (5) References in the following provisions of this Chapter to a member, in relation to an occupational pension scheme, are to a member of the scheme to whom this Chapter applies.

101AB Right to cash transfer sum and contribution refund

- (1) On the termination of his pensionable service, a member of an occupational pension scheme acquires a right to whichever one he elects of the following options-
- (a) a cash transfer sum;
 - (b) a contribution refund.