

## Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme (Scotland) <b>(the Scheme)</b>
Respondents	Police Scotland

## Outcome

1. Mr N's complaint is upheld and to put matters right Police Scotland shall pay him any arrears of pension to which he is entitled on the assumption he took late retirement on 23 June 2017; together with interest at the base bank rate for the time being quoted by the Bank of England for the period from 23 June 2017, to the date of payment inclusive; and £2,000 for the severe distress and inconvenience he has experienced.

## Complaint summary

2. Mr N has complained that Police Scotland failed to tell him that the late retirement factors applicable to the Scheme were to be amended from 24 June 2017.
3. As a result, the pension to which he is entitled is reduced.

## Background information, including submissions from the parties

4. Mr N has been employed by the police continuously since 1979. He has been a member of the Lothian Pension Fund, which is part of the Scheme, throughout that time. The Scheme is administered by the Scottish Public Pension Authority (**SPPA**).
5. Mr N's date of birth is 4 November 1948. At the time of the change in the late retirement factors he was aged 68 years and 7 months. His Normal Pension Age under the Scheme was 65 and so he is classed as being a late retirement member.
6. Mr N says he discovered the existence of a circular issued by SPPA, reference SPN/LG 1/2017 (Amended) (**the circular**), by accident in March 2018.
7. The circular was addressed to, amongst others, the Chief Executive, Scottish Local Authorities and said "This circular should be brought to the attention of Pension Managers, Superannuation Sections and LGPS Employer Payroll Departments.

8. The subject of the circular was "New Local Government Pension Scheme (Scotland) Actuarial Guidance and Factors" and its purpose was "To announce the publication of new actuarial guidance on late retirement..."
9. The circular said: -

"As a consequence of the impact of the new retirement factors on member benefits, the new factors will come into effect on 24 June 2017. The intention of this delayed implementation is to provide members considering late retirement with the opportunity to retire before the new factors take effect. It is therefore important that this information is communicated to potentially affected scheme members as soon as possible"
10. Mr N was concerned he had not been made aware of this change and approached Lothian Pension Fund. In response to an enquiry from Mr N, Lothian Pension Fund said:-

"I can confirm that the Lothian Pension Fund Winter 2017 Employer Bulletin (**the Winter Bulletin**), which was issued on 9<sup>th</sup> February 2017 to all employers who are in the scheme (including yours), contained information regarding the new Late Retirement Factors."
11. The Winter Bulletin said under the heading "Tell your Members": -

"...New actuarial guidance on late retirement has now been published for the Local Government Pension Scheme (Scotland)

As a consequence of the impact of the new retirement factors on member benefits, the new factors will not come into effect until 24 April 2017. The intention of this delayed implementation is to provide members considering late retirement with the opportunity to retire before the new factors take effect."
12. In view of what Lothian Pension Fund had told him Mr N took his concerns to Police Scotland. Police Scotland said that as the Chief Constable was not included in the distribution list for SPPA circular 01/2017, the information had not been made available via its intranet.
13. On 9 March 2018, Mr N raised a complaint through the Police Scotland's grievance procedure. However, Police Scotland replied on 10 April 2018 to say that this was not a matter for the grievance procedure and that Mr N should contact the Pension Fund to discuss his concerns.
14. Despite a subsequent exchange of emails Mr N's complaint was not resolved.

### **Adjudicator's Opinion**

15. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Police Scotland. The Adjudicator's findings are summarised below:-

- There is no doubt Police Scotland was made aware of the change in late retirement factors in the Winter Bulletin.
  - In its response to us, dated 15 March 2019, Police Scotland argued that there is no obligation on it, as an employer, to notify members of the changes in how the late retirement factors are calculated as this was a pensions matter. The obligation therefore fell to the scheme manager rather than the scheme employer.
  - Police Scotland added that whilst there is a legal requirement for the employer to inform members of substantial changes to the scheme or benefits, the change to the late retirement factors was a change to the factors used to administer the scheme and not to the scheme itself.
  - It is unclear why the Winter Bulletin said the changes would come in April rather than June, but regardless it was issued in plenty of time for Police Scotland to take action ahead of the implementation of the new late retirement factors.
  - This was not a matter of an employer giving advice. This was about the provision of relevant information to employees about the impact on his or her benefits following the change.
  - It was reasonable to expect Police Scotland to have provided the salient information to Mr N concerning the implications of the change in factors and the impact on his pension benefits, as directed by the Lothian Pension Fund Winter Bulletin 2017.
  - As a responsible employer Police Scotland had a duty of care to inform Mr N of the implications of the change in late retirement factors on his retirement benefits.
16. As Police Scotland did not respond to the Adjudicator's Opinion, the complaint was passed to me to consider.
17. I see that we wrote to Police Scotland several times in 2019 seeking information that would help resolve Mr N's complaint. However, except for its formal response to the complaint on 15 March 2019, these requests went unanswered.
18. I note that Mr N has told us he took retirement from 29 September 2019.
19. He has also said that Police Scotland has similarly failed to respond both to him and an ACAS conciliator regarding his complaint.
20. In the absence of any further comment from Police Scotland I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

21. The failure to respond to the Adjudicator's opinion within the agreed timescale and the repeated failure to respond to enquiries demonstrates to me that Police Scotland

has not treated this complaint with the degree of respect and care that one would expect of an employer towards its employees.

22. It is also consistent with the lack of attention Police Scotland gave to the impact the changes to late retirement factors would have on Mr N's benefits.
23. Therefore, I uphold Mr N's complaint.

## **Directions**

24. In order to put matters right Police Scotland shall, within 14 days of the date of this Determination:-
  - request SPPA to calculate the late retirement benefits to which Mr N would have been entitled had he elected to take his pension from 23 June 2017; and
  - pay Mr N £2,000 for the severe level of distress and inconvenience he has experienced in respect of not receiving information concerning the implications of the change in late retirement factors on his retirement benefits; for its failure to respond to Mr N; the ACAS conciliator; and also regarding the Adjudicator's Opinion and, except for its formal response to the complaint on 15 March 2019, our requests for further information.
25. Within 14 days of SPPA providing the late retirement benefits calculation Police Scotland shall pay to Mr N:
  - the total arrears of pension instalments, including escalation, due from 23 June 2017, to the date of payment, together with, if applicable, any tax-free cash;
  - interest on the above sum at the base bank rate for the time being quoted by the Bank of England for the period from 23 June 2017 to the date of payment;
  - less any tax-free cash and pension payments already made to Mr N since 30 September 2019.
26. Once the payments, as set out in paragraph 25 above, are made, Police Scotland shall ensure future pension payments are made to Mr N calculated on the late retirement basis provided by SPPA.

**Anthony Arter**

Pensions Ombudsman  
29 January 2020