

## Ombudsman's Determination

Applicant	Ms N
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	Scottish Public Pensions Agency ( <b>SPPA</b> ) Fife Pension Fund ( <b>FPF</b> )

## Outcome

1. Ms N's complaint against SPPA and FPF is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) FPF should award Ms N £1,000 for the serious distress and inconvenience it caused her.

## Complaint summary

2. Ms N's complaint is that SPPA and the FPF rejected her transfer request, because at the time she was less than a year away from her normal pension age (**NPA**) of 60. Ms N says that correspondence she previously received from FPF indicates that her NPA is 65, so the transfer should be allowed. Ms N has further complained that her partner of over 30 years would not be able to make a claim for benefits, in the event of her death, if a transfer is not allowed.

## Background information, including submissions from the parties

3. Regulation E2 (8) of The Local Government Superannuation (Scotland) Regulations 1987 (**the 1987 Regulations**) states:

'(8) Subject to paragraph (11), benefits to which a person has become entitled by virtue of paragraph (1)(d) but which have not become payable by virtue of paragraph (7) and benefits to which a person was entitled by virtue of regulation E2(1)(d) of the 1974 Regulations immediately before 21st December 1987 which have not otherwise become payable, become payable:

...

(b) in the case of a woman, from the first date (if earlier than the date mentioned in sub-paragraph (c) on which she both:

(i) has attained the age of 60 years, and

(ii) is no longer in any employment...'

4. In July 1979, FPF, the local administrator of the Scheme, issued a member notification letter to Ms N. This notification confirmed Ms N's pensionable service had started on 25 June 1979 and that her compulsory retirement age was 65.
5. On 12 March 1991, FPF wrote to Ms N, quoting her retirement benefits that had been accrued up to 16 July 1990, when she left service. FPF said that the benefits would be payable from age 60.
6. On 24 June 2010, FPF issued an updated quotation to Ms N of her deferred retirement benefits, which showed they were payable at age 60.
7. On 21 October 2015, Ms N emailed FPF to query the age at which she may take her benefits and whether the only option before age 60 was to transfer into another pension arrangement for early retirement.
8. In response to this enquiry, FPF informed Ms N that she may only take benefits before age 60 on compassionate grounds, or because of permanent ill-health.
9. On 3 February 2017, Ms N's financial adviser (**the Adviser**), wrote to FPF requesting general information about Ms N's pension, and asked for a transfer value quotation.
10. On 25 March 2017, FPF issued a transfer value quotation to the Adviser. An attached information sheet stated that:

'Scheme members must have left the Scheme at least 12 months before their NPA and make a transfer election at least 12 months before their NPA or within 6 months of leaving, if later: If the member left before 1 April 2015, the NPA is 65, otherwise NPA is 65 or state pension age, whichever is later.'
11. On 15 January 2018, the Council informed Ms N that it would not accept a transfer request, as she was within 12 months of her NPA of 60, and that it would not be allowed under the 1987 Regulations. Ms N has said she first became aware that SPPA might not accept a transfer request in December 2017.
12. Ms N was unhappy with this decision and, on 20 January 2018, she complained through the Scheme's internal dispute resolution procedure (**IDRP**). In summary her complaint was:
  - She had planned for a retirement age of 65, based on information provided by FPF. But it had only more recently communicated that her NPA was 60.
  - Each annual benefit statement she had received since 2010 said, 'Your deferred benefits will normally be payable from your 65th birthday. You may elect to receive payment of them from age 60 years at the earliest, but they may be subject to reductions if taken then...'
  - From these statements, she concluded that the benefits could be paid at age 60, but that they would be subject to reduction if taken before age 65.

- Letters she received from FPF after leaving service in 1990 said that the deferred benefits would be payable from age 60. They did not say the NPA for unreduced benefits is 60 or that transfer values would not be provided within 12 months of that age.
- When a transfer value quotation was issued to the Adviser, no confirmation as to an NPA of 60 was included.
- An information sheet attached to the transfer value quotation said, 'Scheme members must have left the LGPS at least 12 months before their normal pension age and make a transfer at least 12 months before normal pension age or within 5 months of leaving, if later. If the member left the LGPS before 1 April 2015, normal pension age is 65...'
- The NPA shown in the information sheet provided in 1990, when Ms N left pensionable service, should apply in this case.
- A transfer value quotation was issued after Ms N's 59<sup>th</sup> birthday, which indicates that FPF accepted she had not been within 12 months of her NPA.
- Neither Ms N nor the Adviser had received correspondence from FPF saying that an NPA of 60 was applicable. It had not been communicated that the last opportunity to process a transfer request would be before age 59.

13. In summary, FPF said:

- Ms N left pensionable service on 16 July 1990, at which time she became a deferred member.
- Ms N's entitlement to retirement benefits is determined by the 1987 Regulations that were applicable at that time.
- Regulation E2 (8) of the 1987 Regulations states Ms N's retirement benefits would be payable when she reached age 60, which would be on 25 February 2018. FPF's letter of 21 August 1990 and a benefit statement that was issued in 1991 support this.
- Entitlement to a transfer out of the Scheme is covered under Part 4ZA of the Pension Schemes Act 1993. Section 95(1A)(b) of this Act stipulates that a transfer application must be made no later than a year before the member reaches their NPA. Section 100C says the NPA for the purposes of transfers is the earliest age at which a member becomes entitled to receive benefits.
- This means Ms N would have needed to make a transfer request by 25 February 2017.
- FPF does not have discretion to allow a transfer outside of the Scheme's regulations.

- The transfer value quotation Ms N received in March 2017 was issued in error.
  - Ms N's complaint was not upheld.
14. Ms N remained unhappy and complained under stage two of the IDRP. Her further complaint points in summary were that:
- If a transfer value is denied and she is required to take benefits at age 60, she would need to live for at least 20 years for the income benefits to equal the transfer value she received in March 2017.
  - This would also restrict her choices and potential to explore her available options when she had planned to.
15. SPPA's response under stage two of the IDRP mirrored FPF's findings at stage one. SPPA also said that, as FPF has complied with the 1987 Regulations, Ms N's complaint could not be upheld. However, SPPA acknowledged FPF's error in issuing the transfer value quotation and failure to immediately inform Ms N that a transfer would not be allowed. FPF initially offered Ms N £200 in recognition of the distress and inconvenience this caused her but has increased the offer to £500.

### **FPF's Position**

16. FPF say:
- The Adviser's letter of 3 February 2017 asked for general information about Ms N's pension, and a transfer value quotation, but did not request a transfer.
  - Under normal circumstances, a transfer value quotation should be issued within three months of being requested. FPF's response letter of 25 March 2017 to the Adviser included a transfer value quotation in error, but within the normal timescale.
  - FPF has a target of 10 working days for sending out responses to general enquiries. If FPF had met this requirement, a response to the Advisor's information request of 3 February 2017, would have been sent on 22 February 2017, three days before Ms N's 60<sup>th</sup> birthday. Consequently, it would not have been feasible for Ms N to fulfil her regulatory requirement to seek financial advice, before requesting a transfer by her 60<sup>th</sup> birthday.
  - FPF did not have discretion to send a transfer value quotation to Ms N as she was within 12 months of her NPA of 60 when she requested it.
  - There is a difference between the state pension age and the NPA of 60 for deferred benefits, under the 1987 Regulations. The email FPF sent to Ms N in October 2015 stated that her benefits were due from age 60.
  - The retirement information in FPF's website is provided and owned by a third-party actuary. It is a generic website that covers multiple pension funds and

refers to current regulations for the Scheme, not previous regulations, applicable to when Ms N left service. FPF only has limited editing rights to the website but has input a section called 'About the Scheme' that details the NPA under previous regulations.

- The cohabiting partner of a member who left service before April 2009, may not claim a survivor's pension, in the event of the member's death. But following a post-retirement marriage, a survivor's pension would be payable on benefits accrued after 5 April 1988, in accordance with the 1987 Regulations.

## **SPPA's Position**

17. SPPA say:

- FPF provided Ms N with a transfer value quotation in 2018 in error.
- Since 2017, online benefit statements have been introduced which did not initially confirm a member's specific NPA. The online service has since been improved to include a member's own NPA.
- Initially SPPA stated that Ms N's partner would be entitled to a survivor's pension, in the event of her death. But SPPA eventually concurred with FPF that Ms N's partner would not be entitled to a survivor's pension, in the event of her death, under the 1987 Regulations that are applicable.
- Under the Pensions Act 2015, members of flexible benefit arrangements such as defined contribution schemes may request a transfer at any point up to retirement. But members of defined benefit (DB) schemes, including the Scheme, are required to make a statutory transfer request a year or more before the NPA.
- FPF has offered £500 to Ms N in settlement of her complaint.

## **Ms N's Position**

18. Ms N says:

- Since 2010, all benefit statements she received stated that her deferred benefits would normally be paid from age 65.
- When the transfer value quotation was issued to the Adviser in March 2017, it quoted a normal pension age of 65.
- Neither she nor the Adviser received any indication until December 2017 that her NPA was age 60. She had no intention of taking benefits at age 60 and had planned her retirement income on the basis of transferring her benefits.
- There is conflicting information about her NPA on both FPF and the Scheme's websites. Her state pension age is 66 but FPF's website states that 'the minimum NPA is 65. NPA is the age from which you can retire and receive

your pension in full. Your NPA in the Scheme is linked to your state pension age (with a minimum of age 65).'

- FPF's letter of 12 March 1991 and information received from FPF in December 2017 indicates that the 1987 Regulations do not recognise her partner as a spouse. So, no survivor's pension would be due, in the event of her death, if a transfer is not allowed.
- SPPA has said that the Pensions Act 1993 is the reason a transfer is not allowed within 12 months of the NPA. But the Pensions Act 2015 amended this so a non-statutory transfer value could be provided by FPF within 12 months of NPA.
- On 3 February 2017 the Adviser sent a transfer value quotation request to FPF. At the time she was 58 years and 11 months old, over 12 months in advance of her 60<sup>th</sup> birthday on 25 February 2018, and within the age limit allowed under the Scheme regulations. The FPF response was provided in a letter dated 27 March 2017, after her 59<sup>th</sup> birthday.
- After receiving the Adviser's request for a transfer value quotation, FPF failed to recognise how close she was to age 59 and advise her of the implication that she would not be allowed to transfer after that age.
- She disputes FPF's comment that it would not have been feasible for her to make a transfer request before her 59<sup>th</sup> birthday. She says that if FPF had provided a transfer value quotation within 10 working days of receiving the Adviser's request for it in February 2017, she would have been able to obtain the required financial advice and make a transfer request within the time limit.
- Last year her annual income was below the tax threshold and she expects it to be the same this year. If she is now paid her pension rather than transferring it into another scheme for deferred benefits, she is likely to pay tax, and not receive her full pension.

## Adjudicator's Opinion

19. Ms N's complaint was considered by one of our Adjudicators who concluded that further action was required by FPF. The Adjudicator's findings are summarised below:-

- It was not FPF's role to prompt Ms N to request a transfer before her 59<sup>th</sup> birthday. FPF was only required to provide answers to the specific enquiries raised by Ms N or the Adviser.
- Under the 1987 Regulations, Ms N's NPA was 60. FPF's member notification letter that Mrs N received in 1979 quotes a compulsory retirement age of 65 and annual benefit statements issued to Ms N by FPF from 2010 onwards also state

that deferred benefits will normally be paid from age 65. This information would likely have been accepted by Ms N as confirmation of her NPA being 65.

- The incorrect information issued by FPF since 1979 led Ms N to believe that a transfer would be allowed when she requested it aged 59. But this does not convey the right to a transfer that is not allowed under the 1987 Regulations. Pensions legislation does allow non-statutory transfers within 12 months of a member's NPA in some defined benefit schemes, where that provision is included, but it is not mandatory. Consequently, FPF and SPPA have acted appropriately in rejecting Ms N's transfer request under the 1987 Regulations.
- FPF's letters to Ms N of 12 March 1991 and 24 June 2010 correctly stated that her NPA was 60. But it was not made clear in these communications that Ms N would have to take benefits at 60, or that she would not be able to request a transfer after age 59. So, FPF's failure to provide correct information to Ms N that consistently reflected her rightful entitlements, over many years, amounts to maladministration.
- Ms N says that she requested a transfer in order to obtain provision for her partner in the event of her death. Both FPF and SPPA have confirmed that, in accordance with the 1987 Regulations, no survivor's pension would be payable to a cohabiting partner in the event of Ms N's death. Although, following a post-retirement marriage, a survivor's pension would be payable on benefits accrued after 5 April 1988.
- This likely caused Ms N a level of distress and inconvenience that has not been fully recognised by FPF.

20. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Ms N for completeness.

### **Ms N's additional comments**

21. FPF provided Ms N and the Advisor with incorrect information for many years, which has denied her the freedoms allowed under pensions legislation that are enjoyed by members of some other schemes. Consequently, she does not agree that FPF and SPPA have acted appropriately in rejecting her transfer request.
22. If FPF knew her NPA was 60 and there were only a few days until a transfer value could be implemented, on receipt of the request from her Adviser they should have responded immediately to advise of this. If they had done so, she could have activated a transfer prior to the deadline.
23. FPF and SPPA should amend the 1987 Regulations to allow the same flexibility in the Scheme that the Pensions Act 2015 allows in other pension schemes.

24. Due to FPF's errors she has been denied the opportunity to provide a survivor's pension for her partner as she had intended. This should be considered as a financial loss for which FPF should make an award that is equal to an annual survivor's pension.

### **Ombudsman's decision**

25. Ms N says that because she was provided with incorrect information about her NPA she has been denied the freedom to transfer. She argues that freedom to transfer within a year of NPA has, since 2015, been allowed under pensions legislation.
26. FPF has provided Ms N with inconsistent and unclear information regarding her NPA for a number of years and I find that having done so amounts to maladministration.
27. I turn now to the effects of that maladministration. Ms N has not been denied the option of a non-statutory transfer within a year of her NPA because a non-statutory right to transfer is not provided for under the 1987 Regulations. There is also no overriding requirement for SPPA or FPF to amend the 1987 Regulations to include provision for non-statutory transfers.
28. Ms N considers that if FPF knew her NPA was 60 it should have responded immediately upon receipt of the request from her Adviser. She says that had it done so she could have activated a transfer before the deadline. I accept that if FPF had acted very quickly Ms N might have been able to get her financial advice in place. However, I have to reach a conclusion on the balance of probabilities and given the timeline in this case I do not consider it is more likely than not that she would have been able to do so. Even if FPF had responded within their ten day SLA, which I consider is a reasonable response time, I do not consider it more likely than not, that between the request for the transfer quotation on 3 February 2017 and the deadline of 25 February 2017, Ms N would have obtained advice and completed and returned the formal request for a transfer. That process would have required her both to receive the advice and for her receiving scheme to have submitted a transfer request. I think it unlikely that both those steps would have been completed in time.
29. Ms N contends that she has been denied the opportunity to provide a survivor's pension for her partner and this should be considered a financial loss as a result of FPF's errors. In order for a complaint to be upheld any financial loss must have a direct link to the maladministration identified. I do not consider that such a link can be shown because time which was needed to complete the necessary transfer request process was likely to have caused the deadline to be missed in any event. In any event I consider this head of loss to be too remote to be foreseeable. Whilst it might have been Ms N's intention to use the transferred monies to purchase an annuity for herself with a contingent survivor's pension, there is no reason that FPF should have understood that. I find the link between the inconsistent information provided and the inability to provide a survivor's pension too tenuous to be linked to the maladministration.



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30. Nonetheless, FPF's maladministration has caused Ms N a loss of expectation and will have caused her a serious level of distress and inconvenience which should be recognised.
31. Therefore, I partly uphold Ms N's complaint.

### **Directions**

32. Within 14 days of the date of this Determination, FPF should award Ms N £1,000 for the serious distress and inconvenience it caused her.

**Karen Johnston**

Deputy Pensions Ombudsman  
19 March 2020