

Ombudsman's Determination

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| Applicant | Mrs H |
| Scheme | The Salvation Army Officers Pension Fund (the Fund) |
| Respondents | The Board of the Officers Pension Fund (the Board) The Board of Directors of the Salvation Army Trustee Company (SATCO) |

Complaint summary

1. Mrs H's complaint is that the Board and SATCO have knowingly rejected her years of service in the Salvation Army (**SA**) and do not consider that she is entitled to a pension from the Fund due to the fact that she left service as an Officer before her retirement age.

Summary of the Ombudsman's Determination and reasons.

2. I do not uphold this complaint as the Board has acted in accordance with the Salvation Army Act 1963 (**the 1963 Act**).

Detailed Determination

3. As relevant, extracts from the 1963 Act are provided in Appendix 1.

Material facts

4. Executed by General William Booth, a deed poll dated 7 February 1910 provided for the establishment of a pension fund to be applied exclusively for the purpose of providing pensions and benefits for aged and invalid officers of the SA. Currently, the Fund is administered on the basis that it is a registered charity (number 230791) established and governed by the 1963 Act. It has two main purposes:

"...to pay pensions to those Officers who (immediately before the implementation of the Act) were in receipt of retirement allowances from any of the Salvation Army undertakings", and

"...to pay pensions and allowances and to make grants to Officers who may retire on or at any time after the appointed day whether by reason of having reached

retirement age or on grounds of ill-health or of other disability or on any other grounds which, in the opinion of the Board, justify the payment of a pension or the making of an allowance or grant (as the case may be).”¹

5. The Fund is managed by the Board that was constituted by the second schedule of the Act. “This consists of six ex officio members, under the Chairmanship of the Territorial Commander for the time being of the Salvation Army United Kingdom Territory with the Republic of Ireland, and three other Officers of the Army appointed by the Board”²
6. Commissioned Officers (**Officers**) are ministers of religion; they operate under a covenant of sacred calling rather than a contract of employment and are appointed to their role by the Officers Appointment Board.³
7. SATCO recognises that former Officers may face financial hardship in retirement and provisions are in place for these individuals to apply to SATCO for discretionary payments during retirement from a separate arrangement (and not from the Fund).
8. Mrs H was in service with the SA from 26 May 1995 and resigned from her role as an Officer on 16 July 2014, and became a former Officer.
9. On leaving SA, Mrs H received a ‘Termination Grant’ for the sum of £7,415; this was paid by SATCO. The Termination Grant was provided to assist Mrs H to transition out of the SA.
10. SATCO has a policy for former Officers with 10 years or more service who will face financial hardship in retirement. These former Officers may receive an ex-gratia allowance directly from SATCO. A separate SATCO provision permits former Officers, who resigned after April 2017, to transfer an equivalent pension fund value to another pension scheme, the transfer value being paid by SATCO. Having resigned in 2014, this did not apply to Mrs H.
11. In respect of Mrs H’s pension entitlement from the Fund, if any, the relevant provisions are set out in section 3 of the 1963 Act, with specific rules to be found in the Third Schedule. While Section 3(2) provides that Officers may receive pensions and allowances, section 3(3) goes on to confirm, importantly, that they do not have a right to receive a pension: “...nothing in this Act shall confer any right on an officer or other person to receive...a pension or a pension of any particular amount”. The relevant extracts of the 1963 Act are set out in Appendix 1.
12. Having become aware of a potential complaint against the Board and SATCO in respect of the Fund by way of an online petition⁴, Mrs H wrote to the SA advising that she had submitted an application to The Pensions Ombudsman (**TPO**) on 19

¹ Page 3 of the Fund’s Annual Report for the year ended 31 March 2022.

² Page 2 of the Fund’s Annual Report for the year ended 31 March 2022.

³ <https://www.salvationarmy.org/ihq/organisation-structure>

⁴ <https://www.change.org/p/salvation-army-stop-mistreating-your-officers-ministers-they-all-deserve-a-pension-not-just-those-who-remain-as-officers-until-retirement>

January 2021. In its reply to Mrs H dated 10 May 2021, the Board confirmed that section 3(2)(c) of the 1963 Act was not relevant to her as a former Officer and that the requirement to have an internal dispute resolution procedure under section 50(2) of the Pensions Act 1995 (**the 1995 Act**) did not apply to the Fund.

13. On 31 October 2022, the legal representative for both the Board and SATCO provided a formal response to Mrs H's complaint.
14. Having considered the formal response provided on behalf of the Board and SATCO that the Fund is not an occupational pension scheme (**OPS**), the Adjudicator assigned to this case sought further clarification on the status of the Fund on 28 November 2023, from the Board and SATCO.
15. In 2022 (after Mrs H's resignation) the SA, United Kingdom and Ireland Territory issued a guidance document titled 'Preparing For Retirement' (**the Guidance**) that covered a number of allowances and arrangements (beyond just the Fund). It included a comment that it had been provided for general information, and not for advice purposes.
16. On 21 December 2023, the legal representative for both the Board and SATCO provided further analysis to support its formal response that the Fund is not an OPS.
17. I issued a Preliminary Decision on 15 April 2024 (**the Preliminary Decision**) not to uphold Mrs H's complaint on the basis that the Board has acted correctly in accordance with the Act. I provided the parties with an opportunity to make further submissions.

Mrs H's position

18. Having worked for the SA for approximately 20 years, Mrs H is of the opinion that she should be entitled to a pension from the Fund, a position she queried with the SA on 15 February 2021. Mrs H considers that the payment of the Termination Grant is unrelated to her entitlement to a pension from the Fund.
19. SA, and in particular the General of the Salvation Army (**the General**), were responsible for her material wellbeing throughout her years of service, as quoted at section 5(1)(b) of the Salvation Army Act 1980 (**the 1980 Act**). It confirms the General's responsibility "to make arrangements for the spiritual and material well-being of officers". On her resignation, she was expecting to receive a pension at retirement age or be entitled to a pension transfer value. Her expectation had been raised by an entry on her monthly pay advice slips, which said "Employers Pension Paid". This was further supported by the fact that the Board has paid a pension from the Fund to reflect the service years of an Officer.
20. SATCO is the UK organisation through which the General undertakes his obligations and responsibilities to look after the wellbeing of Officers. An element of their wellbeing is the provision of a pension for their service years, and in 1910 the founder of the SA established a pension fund for its Officers, including those that

resigned. The Chairman and five other Directors of SATCO are also members of the Board with the Chairman being the Chair of both entities.

21. The interpretation of section 3(2)(c) of the 1963 Act (which is set out in Appendix 1), and in particular the words “or on any other grounds,” gives the Board the power “to accept past service as being a just cause for receiving an equivalent pension for service years”. However, having reached her statutory pension age, the Board has denied her a pension.
22. Despite the wording of section 3(3) of the 1963 Act, the Board has in practice acted consistently since the Fund came into being, paying pensions as an ongoing liability, except to former Officers who have resigned or have been dismissed. The wording of section 3(3) can be read in the positive, such that the 1963 Act confers a right to “an officer or other person to receive or continue to receive a pension”. The reference to other person means a “resigned officer”.
23. Mrs H contends that section 4(4)(a) of the 1963 Act, provides the Board with sufficient powers to make changes to the Fund. She considers that it should do so for former Officers who have left the SA before normal retirement age, to ensure that they receive a pension.
24. Any reference to legislation defining an OPS is irrelevant as the Fund was set up by a private bill. Consequently, it is not an OPS. Nevertheless, regulation 8 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (**the 1996 Regulations**) confirmed that these regulations apply to a scheme established by the 1963 Act. On this basis, she says that the Board is required to provide a member or a prospective member with specified information, including a statement that TPO may investigate and determine any complaint or dispute of fact or law in relation to an OPS.
25. The Board has breached the 1996 Regulations. In particular, through the non-disclosure of information about the right to make a complaint and the failure to provide information regarding preservation, or transfer of accrued rights, for members where employment ended before their normal pension age.

The Preliminary Decision

26. Further to the Preliminary Decision, Mrs H submitted a number of points in respect of the background and principles of the SA, and its obligations to make arrangements for the spiritual and material well-being of Officers as set out in the 1980 Act.
27. Mrs H argues that the interpretation of section 2(1), 3(2)(c) and 3(3) of the 1963 Act, as set out in the Preliminary Decision, is unclear and/or incorrect as the construction precludes the payment of a pension to Mrs H.
28. The specific reference to “Schemes that are established under the Salvation Army Act 1963” is set out in the disclosure regulations and the Board’s obligations to

provide Officers with information could not be clearer. This is recognised by the fact that the SA sent out the Guidance to all Officers in 2022. (The Guidance is referred to in paragraph 15 above).

SATCO's position

29. The Fund is administered by the Board, such that SATCO has no separate ability to pay benefits under the Fund. Officers are not employees and are not entitled to any benefits from the Fund or any other part of the SA.

The Board's position

The Pensions Ombudsman's jurisdiction

30. The Board does not consider that the PO has jurisdiction to consider complaints relating to the Fund, because the Fund is not an OPS.
31. Under section 239 of the Pensions Act 2004 (**the 2004 Act**), for a scheme to be classed as an OPS, it must be established by someone to whom section 1(2) of the Pension Schemes Act 1993 (**the 1993 Act**) (as amended) applies⁵. Such persons being, in brief, employers or those representing the interest of members.
32. The Board considers, and administers the Fund on the basis, that the Fund does not satisfy the criteria as set out in section 1(2) of the 1993 Act. It has provided a historical letter to confirm that the Department for Work and Pensions (**DWP**) does not consider that the Fund falls within the definition of "occupational pension scheme," as set out in the 1993 Act. (Notwithstanding the need, previously, to exclude the Fund from other provisions that otherwise applied to occupational pension schemes).
33. The Board questions whether the complaint in respect of the disclosure regulations falls outside of the time limits prescribed by regulation 5 of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (**the Pension Ombudsman Regulations**).

The Salvation Army Act 1963

34. The Board argues that all payments made from the Fund are entirely discretionary and no person has the right to any benefit from the Fund. Section 3(3) of the 1963 Act states, as follows:

"The pension fund shall be non-contributory and nothing in this Act shall confer any right on an officer or other person to receive or continue to receive a pension or a pension of any particular amount."

35. Notwithstanding that general point, Section 3(2)(c) is not relevant to Mrs H as it only applies to Officers who remain in service. As Mrs H resigned as an Officer in 2014,

⁵ unless it is prescribed or of a prescribed description.

she is no longer an Officer in accordance with this section of the Act and, therefore, is not eligible for a SA pension.

36. In its submission to TPO, the Board's representative comments that "The Act provides that only "retired officers" are eligible to be considered for pensions under the Fund. A "retired officer" is defined as "an officer who has ceased to be on active service." This means that in order to meet the definition of "retired officer" the person concerned must still be an Officer. Mrs H does not fall into this category". The submission also confirms that some Officers may be granted early retirement (For example, for health reasons) and are eligible to be considered for benefits under the Act and the rules of the Fund, although this is not the case for former Officers.
37. In response to the Preliminary Decision, the Board's representative confirmed that for a very short period of time the allowance slip, referred to as a payslip in paragraph 19 above, did make a reference to a pension. However, this was due to a system error. The software used by SA at that time inadvertently indicated that the Fund was contributory. At no stage did the Officers contribute to the Fund. The error should never have occurred and was remedied.

The Preservation requirements – Pension Schemes Act 1993

38. The preservation requirements under sections 71-82 of the 1993 Act, provide that an active member of an OPS who leaves pensionable service before reaching normal pension age is entitled to receive certain benefits, depending on his or her length of pensionable service.
39. If the Fund was an OPS, these requirements would not apply to the Fund because the Officers are not employees, as set out in paragraph 40 below, and it is not obliged to pay any early leaver benefits to any member, including Mrs H.
40. Section 69(3) of the 1993 Act, applies to an OPS whose resources are derived in whole or in part from payments made or to be made by one or more "employers of earners" to whom the scheme applies. The Board refers to the Employment Tribunal case of *Roberts v Read* [2009] where the tribunal held that a Salvation Army officer was not an "employee" within the meaning of the Employment Rights Act 1996, nor was he an "office holder" within the meaning of the Employment Equality (Age) Regulations 2006.
41. Even if it was to be assumed that the Fund falls within the scope of section 69(3) of the 1993 Act, there are two additional reasons why the preservation requirements do not apply to the Fund:-
 - 41.1. For a member's right to a "long service benefit" to be established (see section 70(1) of the 1993 Act), there has to be a legal obligation to pay benefits under the scheme. Under the 1963 Act, all benefits from the Fund are discretionary, meaning that they are not made in accordance with a legal obligation. Consequently, there can be no long service benefit under the Fund. As short service benefits are calculated by reference to the corresponding long service

benefit, there is no yardstick by which to measure the short service benefit, and so in the case of the Fund there is no such entitlement.

41.2. The preservation requirements do not override the rules of the Fund.

42. Where the rules of an OPS to which the preservation requirements apply do not comply with those requirements, section 132 of the 1993 Act provides:

“...it shall be the responsibility of-

(a) the trustees and managers of the scheme; or

(b) in the case of a public service pension scheme, the Minister, government department or other person or body concerned with its administration,

to take such steps as are open to them for bringing the rules of the scheme into conformity with those requirements.”

43. It is important to note that section 132, only requires that the Board takes “such steps that are open to them”. The 1963 Act does not leave it open to the Board to take such steps with respect to early leavers. The purpose of the Fund is to provide a pension to retired Officers. The Board does not have the power to amend the Fund to provide early leaver benefits to those who are not Officers.

The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (the 2013 Regulations)

44. The Board agrees that it appears that the 1996 Regulations and the 2013 Regulations were/are ostensibly intended, at least in some way, to apply to the Fund, although the practical application of parts of the disclosure regulations to the Fund is less clear. The Board’s approach to the disclosure regulations needs to be considered bearing in mind that it does not deem the Fund to be an OPS and does not administer it on that basis.

Conclusions

Time limits for bringing the complaint to TPO

45. I have considered whether Mrs H’s complaint has been brought to me within the time limits prescribed by the Pensions Ombudsman Regulations. Regulation 5 of the Pensions Ombudsman Regulations, broadly provides that:-

(1) Subject to (2) and (3) below, I shall not investigate a complaint where the applicant brings their complaint to me within three years of the act or omission that is the subject of their complaint.

(2) If the applicant was unaware of the act or omission, the period of three years shall begin when that person knew or ought reasonably to have known of it.

(3) Where it was reasonable for a complaint not to be made within the timeframe described under (1) or (2) above, I may investigate that complaint if it is made within such further period as I consider reasonable.

46. There are two elements of the complaint which I need to consider separately: (a) Mrs H's alleged entitlement to benefits from the Fund, and (b) the failure to provide the information set out in the Disclosure Regulations.

47. Mrs H resigned as an Officer on 16 July 2014, before the "normal retiring age" under the rules of the Fund, and before her state pension age. Mrs H wrote to the SA on 15 February 2021, stating her view that as a former Officer with 19 years and 11 months service she should be entitled to a pension and retirement benefits. She also commented:

"I understand that this pension and benefits are being denied to me when I reach statutory pension age in spite of the fact that in section 3(2)(c) of the SA Act 1963 it is now recognised that the Officers Pension Fund Board has the power to accept past service as being a just cause for receiving an equivalent pension for service years."

48. In its response dated 10 May 2021, the Board confirmed that section 3(2)(c) only applied to current Officers.

49. I consider that the relevant act or omission complained about, for the purposes of the Pensions Ombudsman Regulations, is the non-payment of a pension from the Fund. It is arguable that this took place when Mrs H retired in 2014, rather than from her normal retiring age under the rules of the Fund and is therefore beyond the three-year period in Regulation 5(1). However, given the correspondence noted in paragraph 12 above, I consider that Mrs H did not know the Board would not provide her a pension from the Fund, including under section 3(2) of the Act, until May 2021.

50. As set out in paragraph 7 above, the SA has historically 'looked after' Officers, paying them a pension to reflect their service. I consider it reasonable that Mrs H anticipated that she may receive a pension or a pension transfer. In view of the new policy introduced in 2017, prior changes in policy⁶ that applied retrospectively to former Officers, and the fact that an entry stating "Employers Pension Paid" appeared on her monthly pay slips, I do not consider that Mrs H should reasonably be expected to have known that the Board's application of the Act excluded her from entitlement to a pension from the Fund, as subsequently confirmed. Consequently, I conclude that this element of the complaint is within time under Regulation 5(2).

51. Mrs H did not become aware of the requirements of the disclosure regulations until after she submitted her application to TPO on 19 January 2021 (and, to the extent they may have applied, there would in my view have been a continuing obligation to provide basic information to the member if it had not already been provided). As a lay

⁶ Minute ERA 2012

person, I do not consider that Mrs H ought to have known of the requirements of the disclosure regulations prior to her application (and indeed I note that the Board itself also acknowledge that “the practical application of these parts of the regulations to the Fund is less clear”). Consequently, I consider that this element of Mrs H’s complaint is within time under Regulation 5(2).

Salvation Army Act 1963

52. The Fund was set up by primary legislation in 1963 and it reflects the character and purpose of the SA. It is fair to say that pensions legislation and practice has moved on a good deal since 1963, such that the Act appears anachronistic in part. This also means that it does not fit well, or indeed at all in some cases, with pensions legislation. However, the Board is required to administer the Fund in accordance with the 1963 Act.
53. Section 2(1) defines “officer” as a “commissioned officer”, and section 2(2) states that “any office of the Salvation Army shall be construed as references to the officer for the time being holding that office.”
54. Section 3(2)(c) provides that one of the objects of the Fund is:

"to pay pensions...to officers who may retire on or at any time...whether by reason of having reached retirement age or on the grounds of ill-health or of other disability or on any other grounds which in the opinion of the board justify the payment of a pension..."
55. I consider that the most natural reading of those provisions is that the object of the Fund in section 3(2)(c) is to provide benefits only to individuals upon their retirement directly from being a commissioned officer, and not to people who ceased to be an Officer at any time before they retired.
56. This is consistent with the original rules of the Fund, which provide for benefits to be payable on retirement (whether retiring from active service at normal retiring age, retiring early due to (broadly) ill health, or retiring after normal retiring age). Rule 13(1) provides that “A pension will commence on the first day of the month in which an officer retires from active service...” There are no provisions in the rules for a deferred pension to be payable to anyone who ceased to be an Officer before their retirement.
57. The rules of the Fund set out which officers “will be eligible” to receive a pension from the Fund. It covers, for example, officers with sufficient service retiring from active service on attaining normal retirement age (rule 6) and early retirement on grounds of ill-health or infirmity (rule 7).
58. Mrs H resigned from the SA (and therefore ceased to be an officer) in July 2014. This was before her normal retiring date under the rules, and it was not due to early retirement, ill health or a similar reason. So, she did not retire from her role as an Officer and become eligible for a pension under any of the rules of the Fund.

59. In any event, Section 3(3) of the 1963 Act, provides that “nothing in this Act shall confer any right on an officer or other person to receive a pension or a pension of any particular amount”. I consider the language of section 3(3) is clear that it takes precedence over the eligibility for benefits set out in the rules. So, although the wording “will be eligible” in the rules appears clear, that eligibility does not confer a right to a pension on any officer or other person.
60. Section 3(3) does not expressly empower the Board, or any other body, to make decisions on who does or does not receive a pension under that section. The 1963 Act does not express when someone who is “eligible” for a pension under the rules, might nonetheless not have a right to receive that pension because of the operation of section 3(3). However, I consider that the only reasonable interpretation of section 3(3), when read in conjunction with section 4 (which provides that the purpose of the Board is to administer the Fund and gives the Board the power to amend the rules), is that any power to provide a pension from the Fund is exercised by the Board. The payment of any pension is, therefore, made at the discretion of the Board to those eligible under the rules of the Fund.
61. Mrs H has submitted that the reference to “other person” in section 3(3) of the 1963 Act can be given a positive interpretation, to bring any “other person” within the categories of people who can receive benefits from the Fund. I do not consider this to be correct, as the phrase “nothing in this Act shall confer any right on an officer or other person” is phrased negatively and only confirms those who are not entitled to a pension. The most natural reading of “other person” in section 3(3) is that it covers the widows and other dependents of Officers described in section 3(2), or any other person mentioned in the rules of the Fund.
62. The SA has, to some extent, reflected the progress of pensions legislation with the provision of a new policy from April 2017, to allow Officers with the required number of years’ service, who resign their commissions, to transfer to another pension scheme. This SATCO policy is separate from the Fund and is consistent with section 3(2)(c), as it recognises that the Board does not pay former Officers a pension from the Fund.

The Preservation Requirements - the Pension Schemes Act 1993

63. The preservation requirements in the 1993 Act do not apply to the Fund, as its resources are not derived in whole or in part from payments made or to be made by one or more “employers of earners” to whom the Fund applies, as required by Section 69(3) of the 1993 Act. The relevant definition of “earnings” is set out in section 3 of the Social Security Contributions & Benefits Act 1992. It means “any remuneration or profit derived from an employment;” with “earner” being construed accordingly. Given that the case law referred to in paragraph 40 above confirms that Officers are not in employment, I am satisfied that they also do not meet the definition of “earner” under the 1993 Act.

Entitlement to pension from the Fund

64. In conclusion, I consider that, under the 1963 Act and the rules of the Fund:

64.1. as a former Officer, Mrs H is not entitled to a pension from the Fund; and

64.2. the Board does not have the power to pay a pension to Mrs H as a former Officer.

The Occupational Pension Schemes (Disclosure of Information) Regulations 1996

65. The information to be given to members or prospective members of a “Scheme” established by the 1963 Act is set out in both the 1996 Regulations (now revoked) and the subsequent 2013 Regulations. My understanding is that the Board has never met these requirements; this approach is consistent with its position that the Fund is not an OPS and that it should not be administered on that basis.

66. Regulation 4(4) of the 2013 Regulations, requires that “the trustees...of a pension scheme that is...established under the Salvation Army Act 1963...must give information in accordance with regulation 7”⁷.

67. Regulation 7 of the 2013 Regulations, broadly requires that the basic scheme information listed in Part 2 of Schedule 2 must be given to “members”. A “member” is defined in section 124 (1) of the 1995 Act (the relevant definition) as “any active, deferred, pensioner or pension credit member”. Only the first two of these could apply to Mrs H:-

67.1. an “active member” is “a person who is in pensionable service under the scheme”, and

67.2. a “deferred member” is a person...who has accrued rights under the scheme”.

68. In either case, as the pensions provided to Officers under the Fund are entirely discretionary under section 3(3) of the 1963 Act, the Officers do not accrue any right to a benefit under the Fund. The definition of “pensionable service” in the 1995 Act, refers to “service in any description to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme”.

69. There is, in my view, a gap between the intent of this legislation, which clearly intends to capture the Fund in part and the way in which the provisions of the 2013 Regulations are then drafted. (For example, the information to be provided in Part 2 of Schedule 2 of the 2013 Regulations is headed “Information to Be Given by Occupational Pension Schemes not Falling Within Paragraph 1 of Schedule 1 and Schemes that Are Established Under the Salvation Army Act 1963”). Consequently, it ensures that it provides certain ‘basic information’ to potential recipients of benefits.

⁷ Unless one of the conditions in Regulation 4(7) is satisfied, notably that the trustees need not give information to “...a member or prospective member if no person who employs them in relevant employment has informed the trustees or managers of the scheme that they are a member or prospective member...”

The Board similarly recognises that these regulations “are/were ostensibly intended, at least in some way, to apply to the Fund”. However, as the nature of the Fund is discretionary, it does not allow individuals to accrue rights that qualify an individual for benefits. For the above reason, the Board in my view is technically not required to provide Officers with the information set out in the 1996 Regulations and/or the 2013 Regulations – notably as they do not qualify as “members”.

70. Recognising that the Board is not required to provide Officers with information set out in the disclosure regulations, I appreciate that the SA issued the Guidance in 2022 to help “active Salvation Army officers, cadets and candidates prepare for retirement”. I do not consider that the Guidance fulfilled the requirements of the 2013 Regulations or that it was intended to do so. It communicates information about a number of arrangements, not just the Fund, and does not provide a statement informing individuals how they may seek further assistance with pension related questions or complaints about their pension.
71. I also note that under regulation 2(4)(a) of the 1996 Regulations and regulation 4(6)(a) of the 2013 Regulations, the Board is not required to give information to members or prospective members of the Fund if it was not informed by SATCO that the Officers were members or prospective members of the Fund. The Board has not brought this to my attention. However, as both the Board and SATCO do not consider the Fund to be an OPS it is likely to be the case that these regulations ‘bite’ and that the Board accordingly did not have a duty to provide the Officers with information.

Complaint against SATCO

72. Section 4 of the 1963 Act, confirms that the Board has the power to administer the Fund. The 1963 Act does not give SATCO any powers in respect of the management of the Fund. As the complaint against SATCO does not therefore concern maladministration or a dispute of fact or law concerning the management of a personal pension scheme or OPS, it is not within my jurisdiction. Consequently, I make no finding in respect of the complaint against SATCO.

Status of the Fund

73. The Board’s submission is that the Fund is not an OPS, and that the complaint does not fall within my jurisdiction.
74. The interpretation of what constitutes an OPS, has been subject to judicial scrutiny (notably in *Pi Consulting v the Pensions Regulator* 2013 EWHC 3181 (Ch)). I note that the DWP does not consider the Fund to be an OPS (see paragraph 32 above). However, I also note that the Fund was established by a Private Members’ Bill and is (and was) specifically exempted from many of the provisions of the 1993 Act and the 2004 Act that would otherwise apply to an OPS (and thus it was thought necessary to provide that specific exemption at the time).
75. I am not disposed to decline reaching a Determination on the merits of the case because of ambiguity concerning the status of the Fund and so deny Mrs H the

benefit of my decision. I am minded that it is not necessary for me to settle my view on the Fund's status, as my conclusion in any event, which I can reach without reference to the Fund's status, is that Mrs H is not entitled to a pension from the Fund (see paragraph 64 above).

76. The submissions that I have received from Mrs H include her broad reflections on the SA, the duties of the General and the well-being of former Officers. I recognise the strength of feeling expressed by Mrs H. However, the scope of the complaint I can consider is limited to the administration of the Fund and the entitlement of an Officer to a pension, as set out in the 1963 Act.
77. I have sympathy with Mrs H's position, as in almost any other "pension scheme" she would have accrued a deferred pension to which she would now be entitled to receive. However, the evidence indicates that the Fund has a unique legislative basis, which sets it apart – and the Board can only pay Officers a pension in line with the 1963 Act. As the Board has complied with its legal obligations under the 1963 Act, Mrs H is not entitled to a pension and there has been no maladministration by the Board.
78. I do not uphold Mrs H's complaint.

Dominic Harris

Pensions Ombudsman
22 August 2024

Appendix 1

Relevant extracts from the Salvation Army Act 1963

“Section 2 (1) In this Act unless the subject or context otherwise Interpretation, requires -

““officer” means a commissioned officer of the Salvation Army and includes the general;”

...

Section 3 (1) On the appointed day there shall be established fund to be called “the Salvation Army Officers Pension Fund”.

Section 3(2) The objects for which the pension fund is established are:

...

(c) to pay pensions and allowances and to make grants to officers who may retire on or at any time after the appointed day whether by reason of having reached retirement age or on the grounds of ill health or of other disability or on any other grounds which in the opinion of the board justify the payment of a pension or the making of an allowance or grant (as the case may be).

Section 3(3) The pension fund shall be non-contributory and nothing in this Act shall confer any right on an officer or other person to receive or continue to receive a pension or a pension of any particular amount”.

Appendix 2

Extract from the Pension Schemes Act 1993, with emphasis added in bold.

Section 1: Categories of pension schemes

(1) In this Act, unless the context otherwise requires—

“occupational pension scheme” means a pension scheme—

- (a) that—
- (i) for the purpose of providing benefits to, or in respect of, people with service in employments of a description, or
 - (ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,
- is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force,
- ...
- or a pension scheme that is prescribed or is of a prescribed description;

“personal pension scheme” means a pension scheme that—

- (a) is not an occupational pension scheme, and
- (b) is established by a person within **section 154(1) of the Finance Act 2004**;

“public service pension scheme” means an occupational pension scheme established by or under an enactment or the Royal prerogative or a Royal charter, being a scheme—

- (a) all the particulars of which are set out in, or in a legislative instrument made under, an enactment, Royal warrant or charter, or
- (b) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department or by the Scottish Ministers,

and includes any occupational pension scheme established, with the concurrence of the Treasury, by or with the approval of any Minister of the Crown or established by or with the approval of the Scottish Ministers and any occupational pension scheme prescribed by regulations made by the Secretary of State and the Treasury jointly as being a scheme which ought in their opinion to be treated as a public service pension scheme for the purposes of this Act”.

Section 69: Scope of Chapter I: the preservation requirements

- “(1) This Chapter has effect in relation to the preservation of benefit under occupational pension schemes to which it applies.
- (2) In this Act “**the preservation requirements**” means the requirements specified in or under **sections 71 to 82**.
- (3) This Chapter applies to any occupational pension scheme whose resources are derived in whole or in part from—
- (a) payments made or to be made by one or more employers of earners to whom the scheme applies, being payments either—
 - (i) under an actual or contingent legal obligation; or
 - (ii) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money; or
 - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme”.

Section 70: Interpretation

“(1) In this Chapter—

“**scheme**” means an occupational pension scheme to which this Chapter applies;

“**relevant employment**”, in relation to a scheme, means any employment to which the scheme applies;

“**long service benefit**”, in relation to a scheme, means the benefits which will be payable under the scheme, in accordance with legal obligation, to or in respect of a member of the scheme on the assumption—

- (a) that he remains in relevant employment, and
- (b) that he continues to render service which qualifies him for benefits, until he attains normal pension age; and in this definition “**benefits** ” means—
 - (i) retirement benefit for the member himself at normal pension age, or
 - (ii) benefit for the member's wife, husband, civil partner, widow, widower, or surviving civil partner, or dependants, or others, on his attaining that age or his later death, or
 - (iii) both such descriptions of benefit”.

Section 132: Duty to bring schemes into conformity with indirectly-applying requirements

“Where the rules of an occupational pension scheme to which the preservation requirements, apply do not comply with those requirements it shall be the responsibility of—

- (a) the trustees and managers of the scheme; or
- (b) in the case of a public service pension scheme, the Minister, government department or other person or body concerned with its administration, to take such steps as are open to them for bringing the rules of the scheme into conformity with those requirements.

Section 181: (1) General Interpretation

“**employment**” includes any trade, business, profession, office or vocation and “**employed**” shall be construed accordingly except in the expression “employed earner;”.

Appendix 3

Relevant extract from the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

Regulation 4: Application of these Regulations

“(6) Paragraphs (1), (4) and (5) do not require the trustees or managers of a scheme to give information to—

- (a) a member or prospective member if no person who employs them in relevant employment has informed the trustees or managers of the scheme that they are a member or prospective member,”