Ombudsman’s Determination

Applicant	Dr R
Scheme	Local Government Pension Scheme (**the Scheme**)
Respondents	Scottish Public Pensions Agency (**SPPA**)

Outcome

1. Dr R’s complaint against SPPA is partly upheld. To put matters right for the part that shall be upheld, SPPA shall pay Dr R £1,000 for the serious distress and inconvenience he has experienced.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr R complained that SPPA misinformed him about the cost of purchasing his outstanding Past Added Years (**PAY**) in the Scheme.

4. He has said that both the inaccuracy of the estimate and the delays in receiving it, affected his decision to retire. He has also said that he had been financially impacted as he could no longer buy back the PAY.

Background information, including submissions from the parties

5. On 21 March 2006, SPPA sent Dr R an application form, detailing the cost for him to purchase PAY in the Scheme. It said:-

    - He could purchase 6 years 44 days, over a period of 17 years.
    - His base salary rate was £57,807.00.
    - He would contribute 9% of his salary towards the purchase.
    - He would initially pay £433.55 per month or £5,202.63 per year.

6. On 24 March 2006, Dr R sent SPPA a signed copy of the application form, accepting the terms of the purchase of PAY.

7. In 2018, SPPA sent Dr R an annual benefits statement (**the 2018 Statement**) showing his Scheme benefits payable at normal pension age (**NPA**). It showed that:-

   - NPA was 60.
   - Pensionable service was 16 years 328 days.
   - The PAY purchased was 4 years 117 days.
   - Final pensionable pay was £77,040.36.
   - Annual Pension was £16,273.46.
   - Fixed Pension Commencement Lump Sum (**PCLS**) was £48,820.37.
   - The figures provided were estimates only.

8. In 2019, SPPA sent Dr R another annual benefits statement (**the 2019 Statement**) showing his Scheme benefits at NPA. It showed that:-

   - NPA was 60.
   - Pensionable service was 18 years 94 days.
   - The PAY purchased was 4 years 248 days.
   - Final pensionable pay was £79,021.00.
   - Annual Pension was £18,034.11.
   - PCLS was £54,102.32.
   - The figures provided were estimates only.

9. On 8 November 2019, Dr R emailed SPPA and requested an estimate for the following:-

   - His likely pension on the basis of taking 75% of it and “dropping to a 50% contract” with his employer for a further two years.
   - A normal pension forecast if he were to fully retire in April 2020.
   - The cost to complete the purchase of the outstanding PAY.

10. On 10 November 2019, Dr R received a response to his query from SPPA, informing him it may take up to eight weeks for his request to be processed.

11. On 27 January 2020, Dr R telephoned SPPA and said that it had been more than eight weeks since his request.

12. On 7 February 2020, Dr R telephoned SPPA and informed it that he was thinking of retiring in April 2020 and was considering buying the remaining PAY.

13. On 14 February 2020, Dr R telephoned SPPA again. He said that he was unhappy that he was initially told his estimate would take four weeks to be issued but he had still not received it. He explained that he was considering complaining.

14. On the same date, SPPA replied to Dr R and said:-

- His estimate was currently still at the authorisation stage.
- It would speak to the Estimate Team and assured him that the issue would be considered as a matter of urgency.

15. On the same day, SPPA emailed Dr R and apologised for the delays in providing him with an estimate. It said that the delays were caused by very high volumes of work and assured him that he would receive his estimate by 18 February 2020.

16. On 18 February 2020, SPPA emailed Dr R the estimate for his benefits if he retired in April 2020. It showed:-

- Pensionable service was 19 years 233 days.
- The PAY purchased was 5 years 17 days.
- Annual pension was £20,107.27.
- PCLS was £60,321.81.
- The figures provided were only an estimate.

17. On the same day, Dr R contacted SPPA and said that he was concerned he had not received confirmation of the cost of purchasing the outstanding PAY, particularly because he needed to buy it in the current tax year. He urged SPPA not to cause any further delays, as doing so could prejudice his ability to implement the best course of action for his future pension income.

18. On 23 February 2020, Dr R received an estimate for the cost of purchasing his outstanding PAY and an estimate for his pension benefits after the purchase. It said:-

- Cost for purchasing the outstanding PAY was £7,687.95.
- Pensionable service was 20 years 260 days.
- Annual pension was £21,206.81.
- PCLS was £63,620.43.

19. On the same day, Dr R emailed SPPA and confirmed that he would like to go ahead and purchase the outstanding PAY as a one-off payment before 5 April 2020.

20. On 3 March 2020, Dr R telephoned SPPA and expressed his interest in retiring in June 2020. SPPA told him that:-

- The PAY estimate he had received would not be accurate, as he would have purchased more PAY by June 2020, as opposed to the estimate based on retiring in April 2020.

- In order to purchase the PAY in the current tax year he would need to retire in April 2020, to avoid unauthorised payments. This was because outstanding amounts could only be paid when either leaving the Scheme or retiring.

21. On 4 March 2020, Dr R signed his retirement form with a requested retirement date in May 2020.

22. On 1 May 2020, SPPA wrote to Dr R and informed him that, due to an earlier calculation error, he had received misleading information regarding the cost of purchasing his outstanding PAY. The correct amount payable was £20,321.50 and not £7,687.95 as quoted previously.

23. On 5 May 2020, Dr R emailed SPPA to explain that, given the substantially larger PAY repayment figure, he would need to take additional advice with regard to the tax relief situation on the one-off payment.

24. On 6 May 2020, Dr R complained to SPPA regarding the situation. He said:-

- The revised outstanding PAY figure meant that he was unable to proceed with the purchase of the outstanding PAY due to the tax implications involved.

- The substantially incorrect figure had a significant impact on his retirement plans.

- While he accepted there could be variation in estimated figures, a rise of nearly 265% was unacceptable.

25. On 30 June 2020, SPPA responded to Dr R's complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). It said:-

- It agreed that he had not received the standard of service he should expect.

- The estimate for £7,687.95 was based on an outstanding PAY period of 1 year 27 days. However, the correct outstanding period should have been 2 years 10 months.

- The updated figure of £20,421.50 was correct.

26. On 19 August 2020, Dr R escalated his complaint to stage two of the Scheme's IDRP. He said:-

- After 14 weeks of chasing the estimate requested on 8 November 2019, SPPA had specifically confirmed that the cost of purchasing the outstanding PAY was £7,687.95.

- Based on this figure, he made the decision to retire at the end of May 2020. He allowed for slight variations in the figure provided but, assuming this would not be substantial, he concluded he would have earned enough taxable income to buy the outstanding PAY.

- On 4 May 2020, he was informed that the amount payable was actually £20,421.50.
- The response to his complaint had been completely inadequate, merely outlining the nature of the miscalculation, without recognition of the financial impact of the mistake.
- Had he been given a more accurate estimate, he would have made the decision to retire two to three months later, to allow him to earn enough income in the tax year to buy the outstanding PAY.
- The additional guaranteed and index linked income which SPPA had deprived him of, as well as the lack of an offer of remedy, left him compelled to take the complaint further.

27. On 11 September 2020, SPPA responded under stage two of the Scheme's IDRP. It said:-

- Dr R had not received the standard of service expected from it, and it sincerely apologised for the obvious distress and inconvenience it had caused.
- He had experienced unacceptable delays and received incorrect information, which had an impact on his ability to plan for his retirement.
- He had informed SPPA that in order to avoid tax implications he needed to purchase the PAY before 5 April 2020. During the telephone conversation of 3 March 2020, Dr R was told that, to do this, he would need to retire in April 2020. His retirement application showed a retirement date in May 2020, which was in the next tax year.
- In his email of 6 May 2020, Dr R stated that he would not be able to purchase the PAY because of the tax implications. Benefits were therefore put into payment based on the PAY purchased up to May 2020.
- Dr R did not indicate that he might have made the decision to work for a further two to three months, when he received confirmation of the correct figure. This was first mentioned in his complaint under stage two of the Scheme's IDRP.
- It could have stopped the pension application if Dr R had asked, provided it was more than two weeks prior to his retirement date. He could have resubmitted his application and prescribed a date that suited him better.
- It must pay pension benefits in line with the Scheme Regulations. It could not offer an alternative solution to Dr R.

28. In his submissions to The Pensions Ombudsman (**TPO**), Dr R said in summary:-

- He had been aware that by retiring in May 2020, there would have been some revision to the figures in the estimate. However, he had not requested a revised estimate as it had taken 14 weeks to receive the first one.
- It was on the basis of the estimate that he had chosen to retire in May 2020. He had assumed that there would not be a substantial variation in the final figures once he had submitted the retirement forms.
- Had he been provided with a more accurate estimate, he would have made the decision to retire two to three months later, to allow him to earn enough in the tax year to buy the outstanding PAY.
- His employer forced him to take all outstanding holiday which meant that his actual leaving date was significantly earlier. In effect, he had three working days to decide whether to purchase the PAY or not.
- He understood he was only able to contribute to his pension up to the amount of his relevant annual earnings. Between 6 April 2020, and his date of retirement, it would have been financially viable to purchase the outstanding PAY at the originally estimated amount of £7,687.95.
- If the option was a possibility, he may have considered purchasing £7,687.95 worth of the available PAY. However, given that SPPA took 14 weeks to provide an original estimate, he had been deprived of any reasonable timescale in which to assess that possibility.
- The option of returning to work for two to three months was not a possibility. He only had three days of his notice period left. All work had been passed on and it would have been a misuse of public funds to pay him multiple months of salary when he would have had no workload.
- He had lost the opportunity to buy back PAY amounting to 1 year 27 days.
- He wanted to be financially compensated with a payment equal to the difference of what it would have cost to buy back the PAY against the cost of buying the same benefits from an annuity.

29. In its submission to TPO, SPPA said that its position was reflected in its response under stage two of the Scheme's IDRP. While it accepted errors had occurred, it could not offer any remedy to Dr R.

Adjudicator's Opinion

30. Dr R's complaint was considered by one of our Adjudicators who concluded that SPPA should pay Dr R £1,000 for the serious distress and inconvenience caused. The Adjudicator's findings are summarised below.

31. SPPA had agreed that Dr R was provided with an incorrect estimate regarding the cost of purchasing his outstanding PAY. So, there was no doubt that a problem had occurred.

32. The provision of incorrect information amounted to maladministration. As maladministration had occurred, the normal course of action would have been, as far as possible, to put Dr R back into the position he would have been in had the error not occurred. However, Dr R needed to show that he relied on the incorrect information to his detriment and that it had been reasonable to do so.

33. Dr R could have reasonably realised that the information provided on 23 February 2020 was not correct because:-

    - He had agreed to pay 9% of his salary towards purchasing PAY, in addition to his monthly contributions. The additional PAY payments would have commenced from 1 April 2006 and were due each month until March 2023. With each increase in salary, the payment towards PAY would also increase.

    - At the time of the 2019 Statement, Dr R was earning a salary of £79,021.00. This meant he was paying approximately £7,111.89 per year towards PAY. This information would have been readily available from his monthly payslips.

    - Dr R was retiring nearly three years before his NPA so he should have reasonably expected to pay approximately three times £7,111.89 towards the remaining PAY. However, Dr R had not queried the amount he was quoted.

34. It was unreasonable for Dr R to have retired on the basis of retirement figures, which had clearly been marked as estimates, and which contained information he ought reasonably to have recognised was incorrect. Consequently, financial loss as a result of the misinformation by SPPA did not need to be considered.

35. Dr R was not able to purchase the outstanding PAY in retrospect under the Scheme Regulations.

36. SPPA had not breached any regulatory guidance in refusing back-payment of the outstanding PAY.

37. However, had SPPA provided Dr R with the correct information on 23 February 2020, or had it communicated the original, erroneous estimate on time, Dr R would have no cause for complaint. Dr R had to spend considerable effort in obtaining the original estimate, including various chasers, and his decision-making process was impacted by SPPA failing to meet its own service requirements.

38. SPPA's errors and maladministration would have caused Dr R serious distress and inconvenience, so an award of £1,000 would be in keeping with the PO's guidance on non-financial injustice.

39. Dr R did not accept the Adjudicator's Opinion, and, in response, he provided further comments. In summary he said:-

- During the period in which he should have reasonably calculated the cost of purchasing his outstanding PAY, starting in November 2019, he had been off sick for three months.

- It had been assumed that members should have greater knowledge of the Scheme Regulations and a greater ability to calculate figures than the agency administering it. It surely could not be the case that a member should ignore the information provided by SPPA and rely on their own judgement.

- The impact SPPA's maladministration had was underestimated. By accepting that the PAY could not be purchased in retrospect and instead imposing a minor settlement of £1,000, SPPA had been given a "free pass" to ignore the impact its errors had caused him.

- The award of £1,000 did not reflect the financial impact it had on him and provided very little incentive to SPPA to ensure other Scheme members did not suffer the same.

- Given that the PO's Determination would affect him for the rest of his life, a figure of £10,000 to £20,000 would be more appropriate. The proposed award did not reflect this, nor had it sent any reasonable signal to SPPA that it needed to improve its service.

40. Dr R's complaint was passed to me to consider. I have noted Dr R's further comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

41. I understand Dr R's disappointment that SPPA did not provide him with the correct information. I acknowledge that SPPA, as the administrating body, should have greater pensions knowledge than the Scheme members. However, Dr R had sufficient information available to have reasonably questioned the estimate of buying the remaining PAY - particularly as there was a substantial difference between the original, incorrect amount quoted and the amount actually required to buy the remaining PAY. Dr R could also have allowed more time in which to plan his retirement.

42. I agree that SPPA should have identified and rectified the errors sooner and I sympathise that Dr R's illness would have impeded his ability to evaluate the information. However, despite SPPA being the administrating body, Scheme

members still have a responsibility to scrutinise and question information provided to them where it is reasonably clear that information is incorrect, unclear or inconsistent. In this case, there was sufficient information at Dr R's disposal for him to have reasonably noticed that an error had occurred. It follows that it was unreasonable for Dr R to have relied on the incorrect information to the extent he did.

43. Dr R has said that £1,000 for distress and inconvenience does not adequately reflect the financial impact the incorrect information had on him. He has suggested an amount of between £10,000 and £20,000 would be appropriate. There is a distinct difference between financial and non-financial loss. The purpose of an award for non-financial injustice is not to compensate the applicant for the direct financial impact they might have incurred as a result of maladministration, but to reflect the distress and inconvenience they have suffered as a result of what has gone wrong.

44. I have no doubt that the matter will have caused Dr R serious distress and inconvenience. I find that an award of £1,000 is appropriate recognition in the circumstances. I uphold this complaint in part.

Directions

45. Within 21 days of the date of this Determination, SPPA shall pay £1,000 to Dr R for the serious distress and inconvenience he has experienced.

Dominic Harris

Pensions Ombudsman

10 February 2023