

## Ombudsman's Determination

Applicant	Dr H
Scheme	NHS Pension Scheme (Scotland) ( <b>the Scheme</b> )
Respondents	Scottish Public Pensions Agency ( <b>SPPA</b> )

## Outcome

1. Dr H's complaint against SPPA is partially upheld. To put matters right for the part that is upheld, SPPA shall pay Dr H £1,000 for the serious distress and inconvenience she has experienced.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Dr H complained that she was incorrectly informed that her Scheme benefits would come into payment in January 2021. She said that she based her decision to retire on the information and relied on the fact that she would have an income following her resignation.
4. Dr H requested that her situation is viewed as an exception to the Scheme Regulations, so that she could receive her benefits from the date originally stipulated, and that she be compensated for the emotional suffering she has experienced.
5. Dr H also complained about the complaint procedure conducted by SPPA.

## Background information, including submissions from the parties.

6. On 16 July 1999, Dr H terminated her employment with the National Health Service (Scotland) (**NHS Scotland**) and became a deferred member of the 1995 Section of the Scheme.
7. On 10 May 2010, SPPA sent Dr H a letter which detailed her preserved Scheme benefits. The letter explained that benefits were payable at age 60, provided that she was not in employment with NHS Scotland at the time. It also said that a Scheme member was exempt from this rule if they retired due to ill-health.

8. On 2 August 2020, SPPA sent Dr H another letter which provided information about her preserved Scheme benefits. The letter explained that if Dr H had service after 30 March 2000, she could take her benefits prior to age 60.
9. On 3 September 2020, SPPA emailed Dr H confirming that it had received her completed application for retirement benefits and that a letter detailing her pension benefits would be provided at least three weeks prior to her retirement date.
10. On 24 September 2020, Dr H responded to SPPA. She wanted to confirm that she had submitted her application in sufficient time to receive her pension in January 2021, as she planned to tender her resignation in October 2020 and wanted to ensure she would be receiving funds in the new year.
11. On 26 September 2020, SPPA informed Dr H that she would receive her pension on the last banking day in January 2021 and her lump sum would be paid within three weeks of her retirement date, which was in December 2020.
12. On 23 November 2020, SPPA contacted Dr H and said:-
  - The Scheme Regulations stated that, as she had no service after 31(*sic*) March 2000, she could not take her pension early.
  - Her pension and lump sum was payable from age 60.
  - It sincerely apologised for providing her with incorrect information.
13. On 24 November 2020, Dr H emailed SPPA to explain that she had previously been informed that she would receive benefits in January 2021 and required urgent advice.
14. On 26 November 2020, Dr H emailed SPPA to convey the urgency of the situation. She said:-
  - On the basis of the information, she had received on 26 September 2020, she terminated her employment with effect from December 2020.
  - She was now in a crisis, whereby she was unemployed and would have insufficient funds to meet her financial commitments.
  - She was experiencing major stress and anxiety as a result of the situation and required a response urgently.
15. On 4 December 2020, Dr H had a telephone conversation with an SPPA team member. SPPA's notes of that conversation show that:-
  - Dr H had resigned from her employment with the intention that she could move forward financially using the income from her Scheme pension.
  - Due to the Scheme Regulations, as Dr H held no service after 30 March 2000, her retirement application was terminated as she was not entitled to retire early.

- She found herself in a difficult financial predicament due to not being able to claim her preserved benefits early.
  - SPPA had emailed Dr H a copy of the letter sent to her on 10 May 2010, which stated that her retirement benefits were payable from age 60.
16. Dr H has said that she telephoned SPPA on 7 December 2020 and asked some further questions. She has said it was disappointing not to speak to a Team Leader and was not provided with any further information. SPPA has been unable to trace this telephone call and there is no corresponding phone note. Following this, SPPA emailed Dr H detailing the complaints handling procedure.
17. On 28 December 2020, Dr H complained to SPPA under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She said:-
- On 26 September 2020, SPPA had confirmed that she would start receiving her Scheme benefits in January 2021.
  - On 23 November 2020, after tendering her resignation, she was informed she could no longer receive those benefits.
  - SPPA had acknowledged its error, but no accountability for the error had been taken.
  - It was on the basis of the incorrect information that she had resigned from her previous full-time post, a post she held for the past 21 years.
  - Despite the seriousness of the matter and the financial implications it had, there was no direct line of communication open to her except for SPPA's generic email address.
  - She felt that a nine-day response timescale for a matter as urgent as hers was an "acute failure" by SPPA and was poor treatment of a Scheme member.
  - She requested that the information which she was sent on 26 September 2020 be honoured and her pension be made payable from January 2021. She also wanted SPPA to conduct a review of its complaints process.
18. On 7 January 2021, SPPA responded to Dr H's complaint under stage one of the Scheme's IDRP. It said:-
- Dr H had received incorrect information and had not received the standard of service to which she was entitled.
  - It had arranged for further training to be provided to all staff answering emails and telephone calls. This was to ensure that a deferred Scheme member's record would be scrutinised to ensure that their service was after 31(*sic*) March 2000 before issuing a retirement application.

- SPPA paid benefits in line with the Scheme Regulations as set out in the 1995 Section of the Scheme. The Scheme Regulations stated that benefits could not be claimed early, as Dr H had no service after 31(sic) March 2000. It was therefore not possible for Dr H to receive benefits from 1 January 2021.
  - It apologised for the obvious distress and upset that had been caused.
19. On 18 January 2021, Dr H applied for her complaint to be reconsidered under stage two of the Scheme's IDR. She said:-
- SPPA had taken accountability for the processing errors but was unable to translate this into any meaningful action for her.
  - Since the response had not addressed her request for SPPA to honour the information she had been sent in September 2020, she wanted to her complaint to be reconsidered.
20. On 16 February 2021, SPPA responded to Dr H's complaint under stage two of the Scheme's IDR. It said:-
- Its operating procedures involved several teams. Until a retirement application was allocated to a member of its Retirement Team, a member's record was not routinely checked for anomalies or preclusions. As different teams dealt with different aspects of an application, occasionally mistakes were made.
  - In correspondence Dr H received on 10 May 2010, she was informed that benefits were payable from age 60, provided that she was not in employment with NHS Scotland at the time. So, Dr H should have been aware that her preserved benefits were not available before age 60.
  - The automatic acknowledgement of her retirement application, on 3 September 2020, was not confirmation of her eligibility to receive her Scheme pension from January 2021. The acknowledgment stated that a detailed letter about her benefits would be issued at least three weeks prior to her retirement date.
  - It appreciated that Dr H considered that she had received confirmation of her pension being paid from January 2021. However, as part of SPPA's processing procedure, entitlement was not established until the Scheme's Retirement Team had taken ownership of the application and checked the status of her membership record to make a decision.
  - On 23 November 2020, Dr H was informed that she was not eligible to access her Scheme benefits until age 60. Even though she had already tendered her resignation, it might still have been possible to withdraw it, as she was not due to retire for a further five weeks.
  - It had no power to override the Scheme Regulations as these had been approved by Parliament. It could only determine whether or not the Scheme Regulations had been applied correctly.

- It agreed that it missed opportunities to provide the correct information to Dr H and acknowledged that this matter had caused her much anxiety and stress. It offered Dr H its deepest apologies.

21. On 15 March 2021, Dr H responded to SPPA's stage two IDR response. She said:-

- As a result of her complaint, SPPA had benefitted through the introduction of new processes and practices. However, she had experienced only negative outcomes.
- No accountability or meaningful action had been taken by SPPA in relation to the impact it had on her personal circumstances.
- She had not requested that the Scheme Regulations be overridden but had simply asked for SPPA to honour its email, confirming that she would receive her pension in January 2021.

22. Dr H's position:-

- The focus of her enquiry to SPPA, in May 2010, was solely to gather information about numbers and figures relating to her Scheme pension.
- She did not receive any communication alerting her that the Scheme Regulations had changed, or regarding the significant implications for members such as her. She was unaware that her retirement situation had changed.
- On 4 December 2020, when she had the telephone conversation with SPPA, it was concluded that certain Scheme members were not universally made aware that they could not take benefits until age 60.
- The confirmation she received regarding the date her benefits were payable was not automated and came directly from a specific named person. The content of her email had been assessed, made sense of, and responded to with a clear decision. So, she had no reason to believe the response was incorrect.
- SPPA's telephone notes from 4 December 2020 incorrectly stated that she worked for John Lewis. This had never been the case and she had only ever been employed by NHS Scotland and Glasgow Caledonian University.
- It was disappointing to see that there was no log for the telephone conversation conducted on 7 December 2020. She had been told she would be discussing her issues with a Team Leader. Instead, she spoke to the same administrator as on 4 December 2020, who was unable to provide any further information.

23. SPPA's position:-

- Dr H was incorrectly told that she would receive her benefits in January 2021.
- Dr H has accepted that she received the correspondence dated 10 May 2010. This letter outlined that the pension was payable at age 60. Since she was not

applying on the basis of ill health, it was reasonable to assume that she was fully aware that she was not entitled to this pension until age 60.

24. On 20 August 2021, Dr H brought her complaint to The Pensions Ombudsman (TPO).

## Adjudicator's Opinion

25. Dr H's complaint was considered by one of our Adjudicators who concluded that SPPA should pay Dr H £1,000 for the serious distress and inconvenience caused. The Adjudicator's findings are summarised in paragraphs 26 - 40 below.
26. The Scheme Regulations which set out the rules under which the Scheme operated are the NHS (Scotland) Regulations 2011 (**the 2011 Regulations**).
27. Section E12 of the 2011 Regulations defined the conditions under which a member could receive benefits prior to age 60. It states that "the member will become entitled to receive the pension and retirement lump sum under this Regulation before age 60 if, the member left pensionable employment after 30 March 2000". The 2011 Regulations made no allowance for discretion to be applied. So, in not allowing Dr H to receive her benefits prior to age 60, SPPA had acted in accordance with the 2011 Regulations.
28. Dr H said that during a telephone conversation on 4 December 2020, she questioned why she had not been informed about changes to the Scheme Regulations and that the administrator had accepted that certain SPPA members had not been made aware of such changes.
29. No changes had been made to the Scheme Regulations relating to receiving benefits before age 60 so Dr H could not have reasonably expected to be notified about changes that had not occurred.
30. For a claim for negligent misstatement, Dr H had to prove that:-
- SPPA provided clear, unequivocal, representation to her that she was entitled to benefits.
  - SPPA owed her a duty of care.
  - The duty of care provided was below a reasonable standard.
  - She reasonably relied on the incorrect information and, in doing so, experienced a reasonably foreseeable, irreversible loss that she would not have suffered had she been provided with the correct information.
31. On 24 September 2020, Dr H had been informed that she would not receive details of her pension figures until three weeks before her benefits were due to be payable. This would have been in early December 2020.

32. Since Dr H had tendered her resignation in October 2020, it was unreasonable to make financial decisions about her future before she had access to an accurate representation of her benefits. Dr H could not have reasonably relied on a payment being made in January 2021 if she were unaware of how such payment would be made or how much was payable.
33. Dr H had said the sole purpose of her requesting the letter dated 10 May 2010 was to gather information relating to her pension benefit figures. The letter stated, “these benefits are payable to you at age 60 provided you are not in NHS (Scotland) employment at the time.” Dr H was not employed by NHS (Scotland) in 2020, so she should have reasonably been aware that her Scheme benefits would be payable from age 60.
34. Additionally, the letter sent to Dr H on 2 August 2020, detailed the date from which her benefits were payable. It explained that Dr H could receive benefits prior to age 60 if she had service after 30 March 2000. This information was provided before Dr H tendered her resignation.
35. SPPA was not responsible for any direct financial loss suffered by Dr H, as it was unreasonable for Dr H to base her decision to resign on the information provided on 26 September 2020.
36. In relation to Dr H’s request that SPPA conduct a review of its processing procedures. In its stage one IDRPs response, SPPA assured Dr H that training was being conducted to ensure that all records of deferred Scheme members were reviewed.
37. SPPA has provided Dr H with a poor level of service. This was because:-
  - Dr H had experienced a loss of expectation after being incorrectly told that she would receive her benefits in January 2021.
  - SPPA should have checked the contents of its email dated 26 September 2020, as well as Dr H’s eligibility to receive her benefits prior to age 60, before confirming the date these benefits would become payable.
  - SPPA took almost two months to recognise its error and notify Dr H of the incorrect information. This was an unreasonable period of time to be taken before Dr H was informed of the error.
38. SPPA’s errors and maladministration would have caused Dr H serious distress and inconvenience as well as a significant loss of expectation, so an award of £1,000 would be in keeping with TPO’s guidance on non-financial injustice.
39. Dr H did not accept the Adjudicator’s Opinion, and, in response, she reiterated her previous position and provided the following further comments. In summary she said:-
  - The 2011 Regulations were enacted after 30 March 2000, which was the date after which, service was required and predate the 2010 benefit statement she

received. She requested evidence of the Regulations that were in place before 30 March 2000.

- The SPPA 2010 benefits statements and a Teachers' Pension benefits statement received in 2010 indicated a Normal Pension Age (**NPA**) of 60. She could and did receive her Teachers' Pension retirement benefits prior to reaching age 60. Therefore, Scheme members were supplied with ambiguous and inaccurate information on which to base decisions.
- At no point had she asked for the Regulations to be changed. Despite this, the dominant driver in the complaint response from SPPA was to repetitively refer to Regulations, which could not be changed. She had simply asked SPPA to honour its email confirming that she would receive her pension in January 2021.
- The mistake made by SPPA had not been a single isolated incident, but a series of failures.

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

### **Ombudsman's decision**

41. Dr H complained that SPPA have refused to pay her retirement benefits from the Scheme from January 2021.
42. Dr H has said that she does not want SPPA to override the Regulations but instead, for it to honour the original agreement made on 26 September 2020. A scheme is not bound to follow incorrect information. A member is only entitled to receive the benefits based on correct information accurately reflecting the scheme rules or regulations. For SPPA to provide Dr H with her benefits from January 2021, before reaching the age of 60, would be a direct breach of the Scheme's Regulations. Therefore, SPPA cannot honour its email confirming that she receives her pension in January 2021 without breaching the Regulations. I find SPPA has acted correctly in accordance with the Scheme Regulations.
43. Dr H has said that the 2011 Regulations came into existence after 30 March 2000 and after she received the 2010 benefits statement, so she wanted evidence of the Regulations that were in place in 1999. The 2011 Regulations replaced any previous Regulations, including those in force in 1999, and therefore it is the provisions of the 2011 Regulations that must be applied to Dr H's position. Even had the previous Regulations permitted Dr H to take her retirement benefits before age 60 it remains that Dr H received an updated benefits statement on 2 August 2020 which stated that, "if you worked after 30 March 2000, you may take your benefits prior to NPA of 60." Dr H was not employed by NHS (Scotland) after 16 March 1999, so was not eligible to take her benefits prior to reaching age 60 and so should have been aware of the position.



44. While I understand Dr H's disappointment in not being directly notified of any changes to the Regulations, SPPA are not compelled to notify members of each individual change being made. Nonetheless, changes to the Regulations when made must be reflected in the information provided to members. Since the disclaimer on the 2 August 2020 benefit statement reflected the 2011 Regulations and the relevant retirement criteria, I find that any change in this regard was made adequately clear to Dr H.
45. I note that Dr H has compared the provisions of the Teachers' Pension Scheme to her complaint regarding the Scheme. Public sector schemes are not unified in their approach, each having their own Regulations with different criteria. The Teachers' Pension Scheme is separate and unrelated to the Scheme, but I can understand how it can cause confusion when someone is a member of two public sector schemes. However, it does not assist Dr H for the reasons I have given, especially in paragraphs 43 and 44 above.
46. I have no doubt that the matter will have caused Dr H 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**

47. Within 28 days of the date of this Determination, SPPA shall pay £1,000 to Dr H for the serious distress and inconvenience she has experienced.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
15 February 2023