

Determination of the Deputy Pensions Ombudsman of the Isle of Man – 13 October 2018

Complainant – Mrs O

Respondent – Public Sector Pensions Authority (PSPA)

Isle of Man Government Unified Pension Scheme (the “Unified Scheme”)

Provisional Determination of the Deputy Pensions Ombudsman – Mrs O v PSPA

The Complaint

Mrs O’s complaint related to:

- (1) A claim that she should have been entitled to the back payment of her pension from age 60 (her normal pension age); and
- (2) An alleged lack of information in the run up to her normal pension age setting out what options she had to take her pension, in particular the lack of benefit statements which were not issued to her in April 2015 and April 2016 with the last statement only received in September 2017.

Mrs O’s inability to backdate her pension and, in particular the fact that only increases in line with inflation (CPI) were provided between age 60 and the date the pension came into payment, meant that it is debatable whether she received full value for the delay in the commencement of her pension. Mrs O is essentially complaining that she lost out as a result of not realising that only CPI increases would be provided if she delayed commencement of her pension beyond normal pension age.

Background

Mrs O was a member of the Principal Civil Service Scheme (the PCSPS) and left the civil service on 1 August 2008 and became a deferred member. Mrs O’s benefits were bulk transferred from the PCSPS to the Unified Scheme on 1 April 2012.

Under the Unified Scheme rules (rule 22.4) generally members’ deferred pensions (in excess of the Guaranteed Minimum Pension) have to be revalued in deferment in line with inflation (now CPI) subject to the minimum required by the preservation requirements of the Pension Schemes Act 1993 (as applied to the Isle of Man). Preservation Requirements generally require a value equivalent actuarial uplift if the pension is taken from a date other than normal pension age. Unified Scheme members have the option of taking a pension at any time from age 55 to 75 on giving notice (rule 22) and are not required to take the pension at normal pension age which in Mrs O’s case was age 60. If a member does not apply to take their pension at the time the pension cannot generally (in the case of any member to whom Rule 22.1 of the Unified Scheme rules applies) be backdated to the member’s normal pension age.

Mrs O did receive benefits statements up to 2014 (the last one being received about 7 months before her normal pension age on her 60th birthday). However, unlike other members she was not sent a benefit statement in 2015 and 2016 and did not realise until the 15 September 2017 statement that she had to give notice of her wish to take her pension and the pension could not be backdated. The pension was eventually brought into payment from 19 August 2017 at which stage the freestanding retirement lump sum which was applicable to Mrs O as a former Classic Member of the PCSPS was also paid.

As noted by the PSPA the earlier statements up to 2014 were issued with a factsheet which contained the following information:

"As you can retire at any age between 55 and 75 we will rely on you contacting us to tell us when you want to retire. Please tell us in writing and give us at least 3 months' notice.

As we do not know what age you wish to claim it, we will not write to you before you reach age 60 or 65 to remind you. The Scheme is flexible to fit in with your requirements and it is up to you when you choose to claim your pension."

Investigation of Complaint by PSPA -need to provide mirror benefits in the Unified Scheme for former PCSPS members

When I first considered this complaint I raised the issue with the PSPA of whether the preservation requirements of the Pension Schemes Act 1993 (as applied to the Isle of Man) and which are referred to in Rule 22.4 of the Unified Scheme rules, would require greater increases than increases in line with the Consumer Prices Index to ensure value equivalence when the pension came into payment after normal pension age. In this connection I noted that that Consumer Prices Index increases are generally provided to pensions in payment under the Unified Scheme in any event.

I did not, however, have to reach a conclusion on this point as when the PSPA investigated the background to the complaint in more detail it was established that the transfer from the PCSPS to the Unified Scheme was effected on the basis that there would be no material change to the members' benefits. This was made clear in the member communications which stated that there would be no change (after the transfer) to the member's pension and lump sum pension payable from the normal pension age. The PSPA therefore recognised that the benefits granted in the PSPA on the bulk transfer being made needed to mirror in all material respects aspects of the benefits in the PCSPS.

In preparing the response I understand that the PSPA contacted the Cabinet Office to enquire how the PCSPS dealt with the late commencement of deferred pension. The PSPA was referred to Rule 3.11 of the PCSPS which broadly provided that the deferred pension "*will be brought into payment when the civil servant reaches pension age*". The Cabinet Office interpreted this rule as meaning that the deferred pension should be paid on the member reaching pension age and there is no provision in the rules for the late commencement of a deferred pension beyond normal pension age. Therefore, if for any reason the deferred pension started later than normal pension age, the member would be given back payment from normal pension age. There was no interest element on the back payment under the rules of the PCSPS.

As a consequence of the above and the fact that members were told at the date of the bulk transfer of benefits to the Unified Scheme that there would be no change to the member's benefits payable from normal pension age, the PSPA has agreed to make a back payment without interest to Mrs O from her normal pension age (i.e. age 60) to the date it was eventually brought into payment on 19 August 2017 (the date she claimed the deferred benefits) plus the annual pension increases applied in April 2015, April 2016 and April 2017. This arrears payment will amount to £7,528.31.

In addition, even though no interest is paid under the PCSPS, the PSPA has agreed to include interest in the back payment for the period 18 February 2015 until the date the arrears of pension are paid to. Interest is to be calculated using the Bank of England base rate.

The PSPA has also advised me as a more general issue that it intends to revisit the rules of the Unified Scheme to make sure that the introduction of flexibility over the timing of benefit commencement will not result in any member being inadvertently adversely affected.

Lack of Information on retirement options

The PSPA remains of the view that the statements in the factsheet were sufficient to make it clear that it is the responsibility of the members to notify the PSPA of their desire to take the pension.

I did not have to determine the issue as the PSPA is now proceeding on the basis that Mrs O's pension should have come into payment at age 60 and she did not have the late retirement option. I would note, however, that failure to provide the benefit statements in 2015 and 2016 when other members received benefit statements still could amount to maladministration whether any loss directly flows from it or not.

The PSPA however has already apologised to Mrs O for the failure to provide these statements and is proposing to offer Mrs O a payment of £500 as compensation for the distress and inconvenience she has suffered generally in relation to this matter.

Mrs O is also happy with the proposed steps being taken by the PSPA in relation to her complaint to resolve the matter. I nevertheless consider it helpful still to make a determination in this case as it raises some more general issues which could be relevant in future cases.

Directions

I direct as part of this determination that PSPA:

- (1) should take steps to put Mrs O in the position she would have been in if her pension had come into payment at age 60 by paying arrears of pension plus reasonable interest on the arrears; and
- (2) Pays the sum of £500 to Mrs O for the distress and inconvenience she has suffered as a result of the above events.

I confirm, however, that if the PSPA pays the arrears of pension of £7528.31 already notified to Mrs O with interest at Bank of England Base rate until date of payment on the arrears and pays £500 for distress and inconvenience it will have satisfied these directions.

General Observations

I very much welcome the approach the PSPA has taken in relation to the investigation of the background to this complaint. Mistakes can happen even in a well-run pension scheme. The approach a public authority responsible for managing a public sector scheme or trustees of an occupational pension scheme should take if a mistake is discovered is to apologise (as the PSPA has done) and take steps to rectify or remedy the mistake (as the PSPA is doing) and, where appropriate, make a payment for any distress and inconvenience suffered by the member (as the PSPA is doing).

Ian Greenstreet

Deputy Pensions Ombudsman