

Ombudsman's Determination

Applicant	Miss S
Scheme	Suffolk County Council Pension Fund (the Fund)
Respondent	Suffolk County Council (the Council)

Outcome

1. Miss S' complaint against the Council 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, the Council shall pay Miss S £1,000 for the serious distress and inconvenience she has experienced.

Complaint summary

2. Miss S' complaint concerns the incorrect information she received from the Council in December 2015, concerning the value of her benefits. She said that she relied on the incorrect information to defer taking her benefits and has incurred a financial loss because of her reliance.

Background information, including submissions from the parties

3. Miss S became a deferred member of the Fund on 1 April 2014 and her normal pension age (**NPA**) was 67. However, she could have taken her benefits from age 55 onwards, but an early retirement reduction would have applied, on a sliding scale, if she took her benefits before her NPA.
4. In 2014, Miss S' employer carried out a management restructure and as part of this, her role was due to become redundant. Miss S said that, to make an informed decision, she obtained information about her redundancy pay and pension benefits. She received a letter dated 13 October 2014, from the Council, which informed her of the benefits she could receive at age 55. This letter also informed her of the early retirement reduction that would be applied to her benefits.
5. On 26 November 2014, the Council sent Miss N a further letter, which informed her of the same and also said: -

"Due to the 85 year rule you receive some protection against a full reduction being applied as follows. [sic].

I have calculated that you will meet the 85 year rule at age 58. As this is before you attain age 60, the reduction to your annual pension on pre 1st April 2008 service is based on you receiving your pension benefits 5 years before age 60.

The reduction on your post 31st March 2008 service is based on you receiving your pension benefits 10 years before the normal retirement age, 65.

The reduction of your CARE benefits is based on you receiving your pension benefits before state pension age, which you will attain on 8 January 2028..."

6. Miss S accepted redundancy at the end of August 2015.
7. In late 2015, Miss S requested a comparison of the benefits she could receive at ages 55 and 58.
8. On 11 December 2015 (**the December Letter**), the Council sent Miss S a quotation showing a comparison of her benefits at ages 55 and 58. This quotation showed that (i) a reduction would be applied to her benefits if she took them in February 2016 at age 55 and (ii) that no reduction would be applied if she took her benefits in February 2019, at age 58.
9. On 30 December 2015, Miss S signed and returned the option form to the Council, choosing to defer taking her benefits to February 2019, at age 58.
10. On 17 July 2018, Miss S emailed the Council to query if she needed to do anything to ensure that she received her benefits in February 2019.
11. On 3 August 2018, the Council responded to Miss S and said:

"...I confirm that your normal retirement date is 08/01/2028. This is the date you are able to receive your pension without any reduction to your pension... I understand that the reduction to your pension with effect from 07/02/2019 was not stated in my colleague's previous letter to you and I apologise for this error and any inconvenience caused..."
12. On the same date, Miss S replied to the Council and explained that she had planned her finances on the basis that she would start receiving her benefits in February 2019. Accordingly, she confirmed that she still wanted to take her benefits in February 2019, and she requested a quotation of the benefits she would receive at that date.
13. On 21 August 2018, Miss S was sent a further quotation showing a comparison of the benefits she could receive at ages 58 and 60. This quotation correctly showed that an early retirement reduction would be applied to her benefits, if she took them at age 58. Consequently, the benefits she would receive at age 58 were less than she was originally informed it would be.

14. This resulted in Miss S making a complaint to the Council, through the Fund's internal dispute resolution procedure (**IDRP**). She asserted that she had planned her finances around the benefits the December Letter stated she would receive if she retired at age 58.
15. In its IDRP stage one decision letter, dated 26 November 2018, the Council acknowledged that the December Letter stated an incorrect date of 7 February 2019, in relation to when Miss S could receive her benefits without a reduction being applied. It reiterated that the date should have been stated as 8 January 2028 instead.
16. The Council appreciated that Miss S said that she had relied on the incorrect information in the December Letter, to decide to defer taking her benefits until age 58. However, it believed that, based on previous correspondence she had received from the Council, it would have been reasonable for Miss S to have queried the incorrect date of 7 February 2019, following receipt of the December Letter.
17. The Council noted that Miss S was aware that she could only be paid the benefits she was entitled to under the Fund's Rules and said:

"I am unable to conclude on any financial compensation to you, due to the earlier information provided...in respect of the dates and figures quoted which could have alerted you to querying the figures provided in the [December Letter], which I feel would be a reasonable expectation."
18. As her complaint was not upheld, Miss S appealed through stage two of the IDRP. As part of her stage two IDRP appeal submissions, Miss S explained that she had never intended to wait until 2028 to take her benefits. At the time she received the December Letter, she was awaiting comparable figures showing the benefits she could receive in 2016 at age 55 and those she could receive in 2019 at age 58. Therefore, it was the calculation in the December Letter that was incorrect and not the date.
19. The IDRP stage two decision dated 5 February 2019, also did not uphold Miss S' complaint. The decision maker accepted that Miss S had relied on the December Letter in respect of her financial planning as she had elected to defer her pension until 2019. He also accepted that the Council had made an error and that it had not become aware of the error until Miss S had brought it to its (the Council's) attention in July 2018.
20. However, the decision maker said:

"...applying the general test of reasonableness, can I conclude that you made decisions that a reasonable person would have done in accordance to the facts in this matter? I have regard to the 26.09.15 letter which predates the [December Letter]. It is very noticeable that the calculations in the 26.09.15 letter match those of the [December Letter]. Thus, would it have been reasonable in noting the same to have asked [the Council] for further

clarification before proceeding to rely on that information? In my opinion the answer is yes.

It would have been fair and reasonable to have expected further enquiry on your part, given that the calculations were the same in the 26.09/15 [sic] letter and [the December Letter] respectively.

This together with the other letters citing the 08.01.28 date further leads me to this conclusion.

That being said, [the Council] has admitted to the administrative error, however, in my opinion, that was an honest mistake on [the Council's part].

I am therefore unable to conclude that any financial compensation is due to you for the losses you say you have incurred due to [the Council's] administrative error."

21. As part of her submissions, Miss S provided copies of correspondence between herself and the Council between October 2014 and February 2019. She also made the following points: -

- She had received a retirement quotation on 13 October 2014 (**the first quotation**) but had received a second retirement quotation dated 26 November 2014 (**the second quotation**) which informed her that her benefits in the first quotation had been calculated incorrectly.
- The second quotation contained amended figures and a reference to the 85 year rule. It explained that this would give her some protection against deductions at age 58.
- She had accepted alternative employment on a trial basis but this proved to be unsuitable. So, she accepted redundancy at the end of August 2015.
- It was her intention to take her benefits at age 55 but it was suggested to her (she cannot remember by whom), to defer taking her benefits. Consequently, she requested a comparison of the benefits she could receive at ages 55 and 58. This is why she was sent the December Letter.
- She had not received a letter dated 26 September 2015. The first time she became aware of this letter was when it was forwarded to her after the IDRP stage one decision.
- From the December Letter it was clear that she was better off deferring taking her benefits until February 2019. So, she returned the options form choosing that option and took steps to arrange her finances to provide an income until that date.
- In July 2018, she emailed the Council to query what she needed to do to ensure her benefits were paid in February 2019. It was then that she was informed that

the figures in the December Letter concerning the benefits she could receive at age 58 were incorrect, as the correct deduction had not been applied.

- She was then provided with a new quotation which showed her benefits at age 58, would be over £4,000 less than what she was previously informed it would be. So, she complained through both stages of the IDRPs.
- The IDRPs decisions said that she should have been aware that the figures in the December Letter were incorrect because in other documents her NPA was stated as January 2028. However, the December Letter was sent to her in response to her request for specific information.
- Therefore, it was reasonable for her to have relied on it in preference to any non-specific information she had received in annual benefit statements (**ABSs**).
- As she had planned her finances to take her benefits at age 58, this is what she did. The lump sum she received at age 58 was slightly less than what she was quoted in the December Letter, but the annual pension was £3,400 less than the figures quoted in the December Letter.
- She lived off capital for the years between 2016 and 2019 and depleted her capital and investments to do so. Specifically she (i) transferred a personal pension to a Self-Invested Personal Pension (**SIPP**), to enable her to draw an annual income, (ii) she cashed in a stocks and shares ISA to provide tax free payment to add to her cash reserves and (iii) she used other cash reserves to augment (i) and (ii).
- She has discussed her financial situation with a financial adviser (**IFA**) and considers that if she had received the correct figures in 2015, she would almost certainly have chosen to take her benefits in 2016, at age 55 and preserved more of her capital.
- The most likely scenario is that she would have used some cash to boost her income but left her SIPP and ISA intact. The IFA's view was that doing so, and allowing for her receiving the SIPP funds tax free, she would have been approximately £20,000 better off.
- Finding out that her benefits would be less than she was previously informed it would be, has caused her distress.

22. In response to Miss S' complaint, the Council provided copies of ABS Miss S was sent between 2005 and 2015 and copies of all correspondence between Miss S and the Council between January 2015 and present. It also made the following key points:

- In its IDRPs stage one and two responses to Miss S' complaint, it acknowledged that the December Letter said an incorrect date of 7 February 2019, in relation to when she could take her pension benefits without incurring a reduction. The date should have been 8 January 2028.

- Miss S claimed that she relied on the incorrect information in the December Letter to her financial detriment. However, a letter was sent to her IFA in August 2014, which provided details of the retirement benefits payable to Miss N on her NPA which was 8 February 2027.
- Miss S was sent a letter dated 26 September 2015, which informed her that her benefits would come into payment on 8 January 2028. It was changed from 8 February 2027 because of the increase in the State Pension Age, following the implementation of the Pensions Act 2014.
- It accepted that Miss S was provided with incorrect information in December 2015. However, it believes that there was evidence that would have enabled her to identify the error, and which could have also alerted her to query the figures provided in the December Letter.

The Pensions Ombudsman's position on the provision of incorrect information

23. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, e.g. retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, i.e. those based on correct information accurately reflecting the scheme rules.
24. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.
25. The above sets out the Ombudsman's views very generally on the application of, negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

26. Miss S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Council. The Adjudicator's findings are summarised below:-
 - Miss S asserted that she was given incorrect information concerning the benefits she could receive at age 58 and that she relied on this information to defer taking her benefits. Therefore, the Adjudicator considered whether it was reasonable for

her to have relied on the incorrect information and if so, if she relied on it to her detriment.

- There was no dispute that Miss S received ABSs and other documents over the years that informed her that her NPA was January 2028. However, Miss S did not base her decision to defer taking her benefits until age 58 because she had received an incorrect ABS.
- The information that Miss S received in the December Letter was a comparison of her benefits at ages 55 and 58, not a comparison of the benefits she could get at age 55 and her NPA. The Council was aware that Miss S had requested a comparison of her benefits, indeed this is why the December Letter was sent to Miss S.
- In the Adjudicator's view, the Council had a responsibility to ensure the figures in the December Letter were accurate, as it ought to have been aware that Miss S would have relied on the information. Consequently, it was the Adjudicator's view that it was reasonable for Miss S to have believed the information in the December Letter was accurate, and therefore rely on it.
- Although it was the Adjudicator's view that it was reasonable for Miss S to have relied on the information in the December Letter, to defer taking her pension, in the Adjudicator's opinion, Miss S had not relied on it to her detriment.
- The Adjudicator compared the benefits Miss S would have received if she had taken her benefits at age 55, with the benefits she received at age 58. This showed that had she taken her benefits at age 55 she would have received a tax free cash lump sum of £39,637.35 and an annual pension of £17,079.50. When she took her benefits at age 58, she received a tax free cash lump sum of £45,214.40 and an annual pension of £20,981.10. Therefore, the benefits Miss S received at age 58 were greater than the benefits she would have received at age 55.
- Miss S had confirmed that she requested a comparison of her benefits in 2015 because she wanted to see if she would be better off financially, if she deferred taking her benefits. In the Adjudicator's view, on the balance of probabilities, had Miss S received the correct figures in the December Letter, she would still have deferred taking her pension until age 58. This is because the comparison in the sixth bullet point of paragraph 26 above, shows that she would have been better off financially by deferring.
- Accordingly, it was the Adjudicator's opinion that Miss S had not incurred a financial loss because she relied on the incorrect information in the December Letter, to defer taking her benefits. It was the Adjudicator's view that Miss S had suffered a loss of expectation. Therefore, this part of her complaint should not be upheld.

- With that being said, it was the Adjudicator's opinion that the Council providing Miss S with incorrect information in the December Letter amounted to maladministration. Further, this maladministration was only brought to light following a query from Miss S.
- In the Adjudicator's view, being informed six months before she was due to receive her benefits that those benefits would be lower than she was previously informed they would be, would have caused Miss S serious distress and inconvenience. Therefore, she should receive an award from the Council, in recognition of this.

27. Miss S did not accept the Adjudicator's Opinion and in response made the following comments:-

- She disputes that she has not incurred a financial loss. She acknowledges that by deferring, she received a higher pension in 2019 than she would have received in 2016. However, the pension she was initially told she would receive in 2019 was "significantly" higher than what she received.
- The key point is the cumulative effect of receiving her benefits in 2016 or 2019. After receipt of the December Letter, the IFA prepared "actuarial calculations" to show the effect of taking £17,000 in 2016 against taking £24,500 in 2019. Within 10 years, the cumulative sum of the latter, overtook the cumulative sum of the former.
- The IFA explained, and she understood, that the actuarial figures could never be completely accurate. However, because of the £7,500 difference between the 2016 and 2019 figures, it was clearly advantageous for her to defer.
- Therefore, she took the irrevocable financial steps, as stated in paragraph 21 above. This was on the basis that, the extra pension she would receive, would have enabled her to make up the investments she had converted into income, within a relatively short period.
- The pension she received in 2019 was £4,000 more than the pension she would have received in 2016. It would take longer for the cumulative sum to overtake what she would have received from 2016.
- Had she been provided with the correct figures in the December Letter, she almost certainly would not have deferred taking her pension and would have preserved more of her capital.

28. As Miss S did not agree with the Adjudicator's Opinion, the complaint was passed to me to consider. Miss S' further comments does not change the outcome. I agree with the Adjudicator's Opinion for broadly the same reasons as the Adjudicator.

Ombudsman's decision

29. There is no dispute that Miss S was provided with incorrect information by the Council. However, like the Adjudicator, it is my view that she has not proved that she incurred a financial loss because of the incorrect information.
30. Miss S has confirmed that she requested a comparison of her benefits at ages 55 and 58 to see if it would have been financially advantageous for her to defer taking her benefits. I have to consider, without applying the benefit of hindsight, what Miss S was likely to have done had she received the correct figures for comparison at the time and whether she can show that the decision which she took has left her financially worse off compared to the one that she would have taken.
31. In this case, it is very difficult to be satisfied that Miss S would on balance of probabilities have taken her benefits at 55 without the benefit of hindsight. I am not satisfied that she has proved that she would. Even if I am wrong about that, I find that there can be no financial loss flowing from the decision to take a reduced benefit at age 58 rather than age 55. That is because the actuarial reduction which is applied to the benefit at each date is intended to produce equivalence over the long term for which the benefit is paid. The fact that one option is better than another over the first ten years is not itself proof of financial loss, given that benefits are payable for life.
32. I appreciate that Miss S considers that she would have preferred to take the lower pension which was available at 55 and preserve more of her capital but I have seen no evidence that she is in fact financially worse off over the long term because of that decision.
33. I appreciate that Miss S is disappointed that she received over £4000 less than she had expected to receive, in 2019. I find that this is a loss of expectation and not a financial loss, as Miss S was not entitled to receive her pension unreduced before her NPA.
34. In summary, I can see no evidence of actual financial loss flowing from the decision made. However, I accept what Miss S says about the effect that the misinformation had on her ability to plan and make choices according to her own preferences. I find that the Council providing Miss S with incorrect information has resulted in her experiencing a serious level of distress and inconvenience. Therefore, she should receive an award in recognition of this.
35. I uphold Miss S' complaint in part.

Directions

36. Within 14 days of the date of this Determination, the Council shall pay Miss S £1,000 for the serious distress and inconvenience she has experienced.

Karen Johnston

Deputy Pensions Ombudsman

3 April 2020