

Ombudsman's Determination

Applicant	Mr K
Scheme	Southern Electric Group Section of the Electricity Supply Pension Scheme (the Scheme)
Respondents	Southern Electric Group Trustee Limited (the Trustee) SSE plc (SSE)

Outcome

1. I do not uphold Mr K's complaint and no further action is required by the Trustee or SSE.

Complaint summary

2. Mr K has complained that the retirement pension, which was initially paid unreduced due to his redundancy, has subsequently been reduced by the Trustee in breach of pensions legislation and due to SSE unreasonably suggesting that he had, in fact, left by mutual agreement.

Background information, including submissions from the parties

3. Regarding unreduced benefits at retirement, the Southern Electric Group of the Electricity Supply Pension Scheme Consolidated Rules, 13 June 2017, that govern the Scheme, (**the Scheme Rules**) states:-

"16(1) The Benefits specified in and calculated as provided by Rule 14^[1] shall, if the Employer employing the Member concerned so requests, be paid to any Member who retires on or after attaining age 55, Provided That either he has at least ten years' Contributing Service (including Added Years purchased to the date of Retirement as reduced in accordance with Rule 9(4)) or he has been in Continuous Employment for a period of not less than ten years terminating immediately prior to the date of his Retirement...

¹ 'Retirement at or after Normal Pension Age'.

16(2) The benefits specified in and calculated as provided by Rule 14 shall, in the case of a Member who is retired compulsorily by the Employer employing him on or after attaining:

(a) in the case of a Member who became a Member of the Scheme before 6 April 2006, age 50;

...

be paid to him if such Retirement is consequent on reorganisation or redundancy and may, in the discretion of such Employer, be paid to him if such Retirement is for any other cause;

...

16(4) Paragraphs (1) and (2) apply in relation to any member who has not yet attained normal [retirement] age or, in the case of a member who was in continuous [service] on 31 March 1988 and remained in continuous [service] on 17 May 1990, has not yet attained age 63."

4. Sections 401 and 403 of the Income Tax (Earnings and Pensions) Act 2003 (**the 2003 Act**) provides that the first £30,000 of a compensation payment to an employee for termination of employment in a tax year is exempt from income tax.
5. On 8 September 1980, Mr K joined the Scheme having commenced employment with South Wales Electricity Board (**SWEB**), which is a part of the UK electricity supply industry.
6. In 1989, SWEB was rebranded as South Wales Electricity (**SWALEC**).
7. On 18 September 1995, SWALEC wrote to Mr K and said a new European Court of Justice ruling (**the ECJ Ruling**) required employers to ensure the equalisation of pension entitlements between men and women. Accordingly, amendments had been made to the Scheme Rules for compliance with the ECJ Ruling. In summary SWALEC also confirmed that:-

"A. Staff who joined the electricity industry on or after 1 April 1988

Staff who joined the electricity industry on or after 1 April 1988 are largely unaffected by the changes to [the Scheme]. The normal retirement age (**NRA**) remains as 63 for both men and women. Retirement before age 63 without an actuarial reduction would only be possible in the circumstances outlined in Part C below.

B. Staff who joined the electricity industry before 1 April 1988

Previously, members who had joined the Scheme before 1 April 1988 were able to claim their pension from age 60 for women and age 63 for men. Now men who joined the Scheme before 1 April 1988 can also claim retirement benefits from age 60...

C. All members – circumstances in which benefits will be paid without reduction when retiring before age 63

Members who retire before age 63 will receive their pension without an actuarial reduction in the following circumstances:-

- i) Female members who joined the Scheme before 1 April 1988 and choose to retire at over age 60.
- ii) If the [employer] consents.

...”

8. In August 2000 SSE took over SWALEC and became Mr K's employer linked to the Scheme through continuous service.
9. On 15 January 2014, SSE wrote to Mr K and said:-
 - Following a previous three-year pay deal for employees based on performance that was due to end in 2014, a project had commenced to find a solution for those employees who:
 - a) did not have an SSE salary range; or
 - b) had an annual salary that is above the salary range for their role.
 - This was necessary to ensure that employees were assigned to the correct salary range, so that equal pay was applied across SSE, and to ensure compliance with equalisation legislation. Mr K had been assigned to a salary range with a maximum limit of £29,413 but his salary was £49,656. Consequently, he was being paid above the maximum salary for his role.
 - From 2014 onwards any salary above the maximum level would be considered as 'unconsolidated' and could not be treated as pensionable pay. It would not be appropriate to exacerbate this situation by increasing Mr K's salary.
 - Due to uncertainty caused by the previously mentioned changes, there would be a three-year 'protected pay' period, meaning that Mr K's salary would not reduce to within the maximum of his salary range during that time.
10. On 25 May 2016, SSE wrote to Mr K and said that following a review it had been established that his salary remained above the maximum level for his role. Further,

the previously confirmed 'protected pay' period was due to end on 31 March 2017. Consequently, on 1 April 2017 Mr K's annual salary would reduce to £31,395 which was the new maximum limit of his assigned pay range.

11. On 26 May 2017, SSE's HR Department (**the HR Department**) offered Mr K a termination agreement to end his employment with effect from 1 November 2018, (**the termination agreement**), which quoted a severance payment of £13,000.
12. The termination agreement also confirmed that no income tax would be deducted from the severance payment in accordance with the 2003 Act.
13. On 10 January 2018, Mr K emailed SSE's Pensions Department (**the Pensions Department**) and said that he was due to leave in accordance with the termination agreement, and no actuarial reduction should be applied to his retirement benefits. Mr K also asked for a retirement quotation on this basis.
14. On 16 January 2018, the Pensions Department and Mr K exchanged emails. The Pensions Department said that the HR Department would need to provide confirmation of Mr K's planned redundancy before a retirement quotation, with no actuarial reduction, could be provided.
15. In response, Mr K asked the Pensions Department whether he was required to provide a copy of the termination agreement, and the Pensions Department said that he should do so, and Mr K complied with the request.
16. On 24 January 2018, the Pensions Department sent a retirement quotation with no actuarial reduction to Mr K.
17. On the same day Mr K emailed the Pensions Department and said that he would like a further quotation for a full pension with no tax-free cash lump sum.
18. On 25 January 2018, the Pensions Department emailed Mr K and quoted a full pension, with no lump sum, of £30,936.01 a year.
19. On 9 July 2018, Mr K emailed the Pensions Department and said that he had received two further retirement packs, one of which was dated 18 June 2018 and it quoted 2 November 2018 as his final day of employment in error.
20. Mr K complained that the second retirement quotation, dated 29 June 2018, incorrectly stated 19 November 2018 would be his final day of employment, and an actuarial reduction had been applied to the quoted pension. So, he asked for confirmation that this information was sent in error.
21. On 17 July 2018, the Pensions Department emailed Mr K in response and said that he should ignore the retirement quotation dated 29 June 2018.
22. On 3 August 2018, the HR Department wrote to Mr K and confirmed that his employment would be terminated on 1 November 2018 in accordance with the termination agreement, and that a 12-week notice period would commence on 9 August 2018.

23. On 24 October 2018, the Pensions Department wrote to Mr K and confirmed that he would receive an unreduced annual retirement pension of £31,603.43.
24. On 1 November 2018, Mr K left SSE.
25. On 19 November 2018, Mr K reached age 60.
26. On 16 January 2019, the Pensions Department emailed Mr K and said:-
 - At Mr K's retirement, his pension had been calculated on an unreduced basis, which meant that insufficient early retirement employer contributions had been paid. However, when the Pensions Department sought a payment to correct the insufficient employer contributions, confirmation was received from the HR Department that an unreduced pension should not apply, since Mr K had left by mutual agreement rather than due to redundancy.
 - Consequently, it had been necessary to recalculate Mr K's pension with an early retirement factor applied. This resulted in Mr K's annual pension entitlement being reduced from £31,603.43 to £30,585.61. The lower value would be implemented from 1 February 2019 but the overpayments covering the period November 2018 to January 2019 would not be reclaimed.
27. On 21 January 2019, Mr K complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**), and said:-
 - The Pensions Department had been aware of the termination agreement since he sent a copy of it in January 2018. Having provided retirement quotations for an unreduced pension, it was unreasonable for the Pensions Department to then amend those figures a year later. Retirement quotations dated 18 June 2018, 12 July 2018, 23 October 2018, and 24 October 2018 all confirmed that he would receive an unreduced pension.
 - Under the Scheme Rules no actuarial reduction should be applied for early retirement at age 60 when this was due to reorganisation or redundancy so he should receive full benefits. The termination agreement was for redundancy as SSE terminated his employment on 1 November 2018 in return for a severance payment of £13,000. That sum was paid exempt from income tax in accordance with the 2003 Act, and in the letter of 3 August 2018, SSE confirmed the termination of his employment with a 12-week notice period commencing on 9 August 2018. This further emphasised the point that he had left due to redundancy rather than retirement.
28. On 28 February 2019, the Pensions Department wrote to Mr K in response and said:-
 - Scheme Rule 16(2) provided that unreduced benefits were payable to a member who had been compulsorily retired by the employer, where the retirement was "consequent on reorganisation or redundancy and may, in the discretion of such employer, be paid to him if such Retirement is for any other cause".

- SSE had confirmed that the termination of employment in Mr K's case was not on the grounds of redundancy or reorganisation. Further, the termination agreement did not refer to redundancy or redundancy payments. Consequently, it was appropriate to treat Mr K's pension claim as being for early retirement with an actuarial reduction applied.
- SSE had not exercised its discretion to allow Mr K's pension to be paid unreduced. Consequently, Mr K was in receipt of higher benefits than permitted under the Scheme Rules. Mr K's annual pension has been corrected to £30,585.61 with effect from 1 March 2019.

29. On 18 March 2019, Mr K complained under stage two of the IDRP and said:-

- In accordance with the ECJ Ruling, male members, including himself, had their NRA changed to age 60 to match female members. However, if a member retired at age 60 without the employer's consent their pension entitlement before April 1988 was reduced. Since he joined the Scheme in 1988 an actuarial reduction had unreasonably been applied to his pension by the Trustee in breach of the ECJ Ruling.
- Before his pension went into payment on 1 November 2018, the benefit entitlement was quoted without an actuarial reduction. However, on 16 January 2019 he received notification that SSE had refused to pay a contribution deficiency into the Scheme, which meant that his annual pension would be reduced from £31,603.43 to £30,585.61, a reduction of £1,017.82.
- He was entitled to an unreduced pension in accordance with Scheme Rules 16(1), 16(2) and 16(4). The termination agreement did not specify that he left through redundancy, but it did state that his employment would be terminated from 1 November 2018 in return for a severance payment of £13,000 and this sum would be exempt from income tax in accordance with the 2003 Act. This termination of his employment was a form of redundancy that followed the reorganisation of SSE. The 2003 Act provided for severance payments of up to £30,000 to be paid exempt of income tax, as in his case.
- The termination notice also confirmed a 12-week notice period from 9 August 2018, which further emphasised that he did not leave by mutual agreement. He would instead have retired at age 65 but signed the termination notice in response to a projection by SSE which had determined that his annual salary would decrease from £49,656 to £31,395.
- It was unreasonable of SSE to say that the termination agreement did not mention 'redundancy'. This was irrelevant as it was referred to as a 'mutual agreement'. The termination agreement did not refer to his pension, because it was specifically excluded from 'without prejudice' meetings that he had with SSE before the agreement was offered.

30. On 26 April 2019, the Trustee wrote to Mr K in response and said:-

- SSE had not requested or consented to the payment of unreduced benefits to Mr K under Scheme Rule 16(1). This outcome had been confirmed by SSE, which had the authority to decide whether benefits were payable under Rule 16(1). The Trustee had no discretion to pay Mr K's pension under this rule. Mr K was not entitled to receive an unreduced pension.
- The termination agreement did not cite redundancy as the reason for the termination of Mr K's employment. Further, Section 139 of the Employment Rights Act 1996 identified three sets of circumstances which amounted to a redundancy:-
 - Business closure - closure of the business altogether.
 - Workplace closure - closure of one of several sites, or relocation to a new site).
 - Diminished requirements of the business for employees to do work of a particular kind.
- Following Mr K's appeal under stage two of the IDRPs, SSE had confirmed that his retirement did not result from redundancy or reorganisation. This was, in any case, a matter between Mr K and SSE. The Trustee would not question any aspect of this employment relationship unless it considered that there was good reason to do so. The Trustee was entitled to rely on SSE's assertion that the termination of Mr K's employment was not through redundancy or reorganisation.
- The Trustee was required to pay Mr K's benefits under the Scheme Rule that applied to his circumstances. For members who leave and do not qualify for a pension under Scheme Rule 16, the applicable rule was 17(1A)(d) (Leaving Service other than on Retirement or death). This Scheme Rule provided that a member who left before reaching the normal retirement age could ask for their pension to be paid early, subject to satisfying certain conditions. The benefits must then be reduced on the advice of the Scheme's actuary to take account of early payment. These conditions applied to Mr K and were consistent with the ECJ Ruling. Consequently, Mr K's complaint was not upheld.

Mr K's position

31. In 2013, SSE started a project to review the 'protected' salaries of employees with earnings that were above the normal level for their role. This was a reorganisation of SSE, which would have reduced his salary by 36%, and it ought to have entitled him to an unreduced pension when leaving. He also qualifies for an unreduced pension under Scheme Rules 16(1) and 16(2) since he is over age 55, has 40 years of pensionable service, and has been in continuous service for 38 years.
32. The Scheme Rules provide for a pension to be paid, unreduced, when an employer has consented, and the member is aged over 55 with at least 10 years of service. SSE provided consent for him to leave on 1 November 2018 via the termination agreement. This amounts to redundancy, especially since he received a severance

payment under the termination agreement of which the first £30,000 was exempt from income tax in accordance with the 2003 Act. This legislation supports employees who have been made redundant.

33. Following, the ECJ Ruling, male members had their NRA amended to age 60 from age 63 for pension equalisation with women. However, for members who joined the Scheme before 1 April 1988 and retired before age 60, without the employer's consent, an actuarial reduction is applied. He joined the Scheme in 1980, consequently an actuarial reduction has been applied in breach of the ECJ Ruling. However, from 24 October 2018 the Pensions Department confirmed that he would receive an unreduced pension. Then on 16 January 2019, the Pensions Department said that he was not, in fact, entitled to receive an unreduced pension, since SSE was not prepared to cover a contributions deficiency.

The Trustee's position

34. Mr K has received overpayments totalling approximately £250 as he was never entitled to receive an unreduced pension. However, the Trustee has not sought to reclaim this sum. Although Mr K has already effectively received an award through this decision, a further award of £500 to Mr K in recognition of the distress and inconvenience caused to him would be appropriate.

Adjudicator's Opinion

35. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or SSE. The Adjudicator's findings are summarised below:-
- Scheme Rule 16(2) provides that a pension with no actuarial reduction is payable to a Member when the Employer has said retirement is compulsorily terminated "consequent on reorganisation or redundancy and may, in the discretion of such Employer, be paid to him if such Retirement is for any other cause".
 - The payment of an unreduced pension is at the discretion of SSE. There is no automatic entitlement to an unreduced pension for any member, regardless of whether they meet the qualifying criteria set out in Scheme Rule 16(1).
 - In Mr K's case, SSE has not exercised its discretion under Scheme Rule 16(2) to award an unreduced pension, on the basis that Mr K did not leave through redundancy or reorganisation. Since the Trustee is required to act in accordance with the Scheme Rules, it has no discretion to pay Mr K an unreduced pension due to SSE's decision.
 - In the Adjudicator's opinion there is no requirement for either the Trustee or SSE to pay Mr K an unreduced pension. Neither SSE nor the Trustee has breached the ECJ Ruling, which was designed to equalise retirement benefits that both male and female pension scheme members are entitled to receive.

- That SSE conducted a project, starting in 2013, to review the salaries that some employees received, is not evidence of a reorganisation, since it is possible to review employees' pay without reorganising a company.
- The 2003 Act provides that the first £30,000 of a compensation payment to an employee for termination of employment is exempt from income tax, without specifically referring to redundancy. So, in the Adjudicator's view, the fact that Mr K received a severance payment from SSE, that was exempt from income tax, in accordance with the 2003 Act, is not evidence that he left due to redundancy.
- The termination agreement does not specifically refer to Mr K being made redundant by SSE and does not support his claim in that regard. The SSE and the Trustee have applied the Scheme Rules correctly in concluding that Mr K is not entitled to an unreduced pension, since there is no evidence that he left SSE due to reorganisation or redundancy.
- The Pensions Department sent several retirement quotations to Mr K between January 2018 and June 2018, with no actuarial reduction applied. Then in October 2018 the Pensions Department confirmed that Mr K would receive an unreduced pension. It was not until January 2019 that the error was identified, even though on 9 July 2018 Mr K had enquired about a retirement quotation he had received dated 29 June 2018 with an actuarial reduction applied.
- In the Adjudicator's opinion, these issues amount to maladministration by the Pensions Department that would have caused Mr K significant distress and inconvenience. The Trustee has prudently decided not to reclaim overpayments worth around £250 made to Mr K before the error was identified. The Trustee has also offered Mr K a further £500 in recognition of the distress and inconvenience caused, making a total award of £750.
- An award of £500 is in keeping with the Ombudsman's guidance for significant non-financial injustice. In the Adjudicator's view, the Trustee's awards to Mr K totalling £750 are sufficient recognition of the distress and inconvenience caused to him.

36. The Trustee and SSE accepted the Adjudicator's Opinion, Mr K did not, and the complaint was passed to me to consider. Mr K has provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr K.

Mr K's additional comments

37. He left SSE at the NRA of 60 in November 2018 and should also have qualified for an unreduced pension on that basis. He also qualifies for an unreduced pension in accordance with the letter of 18 September 1995 which confirmed that for a male member who joined the Scheme before 1 April 1988, an "actuarial reduction does not apply in the following circumstances:

- Retirement due to reorganisation, redundancy, or any other cause at the discretion of [SSE]...
 - Retirement with [SSE's] consent..."
38. SSE wrote to him on 18 October 2018 and confirmed its consent for his retirement from 1 November 2018. SSE had also previously consented to his retirement from the NRA in the termination agreement. However, at the time SSE was unaware of the potential actuarial reduction on his pension entitlement if he left without consent as set out in the letter of 18 September 1995 which states:
- "If a pre-1 April 1988 male member retires on or after age 60 without the [employer's] consent before age 63 then the benefits in respect of his pensionable service since 17 May 1990 will be based on the pensionable service, he has accrued since that date without any actuarial adjustment. However, the benefits in respect of pensionable service prior to 17 May 1990 will be subject to an actuarial reduction."
39. So, having joined the Scheme in 1980, 10 years out his 40 years of pensionable service could be subject to an actuarial reduction if he left SSE without consent. But SSE has no discretion over the payment of an unreduced pension when it has consented to a member's retirement, as in his case.
40. The project started by SSE in 2013 to review the salaries of more than 1,000 employees was a major undertaking and resulted in his pay being reduced by 36%. This amounted to a reorganisation of SSE that ought to also have entitled him to an unreduced pension.

Ombudsman's decision

41. Mr K has complained that his retirement pension was initially paid unreduced, because of his redundancy. He contends that the Trustee subsequently reduced the payments in breach of pensions legislation and due to SSE unreasonably suggesting that he had, in fact, left by mutual agreement and not redundancy.
42. Mr K said he left SSE at the NRA of 60 in November 2018 and should have qualified for an unreduced pension on that basis. I note that under the termination agreement Mr K's employment with SSE ended on 1 November 2018. However, Mr K did not reach age 60 until 19 November 2018. Consequently, I find that Mr K left SSE before reaching NRA and failed to qualify for a pension with no actuarial reduction applied due to his age being only 59 at the time.
43. Mr K submits that he also qualifies for an unreduced pension in accordance with the letter of 18 September 1995. He contends the letter confirmed that for a male member such as him who joined the Scheme before 1 April 1988, an actuarial reduction does not apply when retirement is due to reorganisation, redundancy, any other cause at the discretion of SSE, or alternatively with SSE's consent. Mr K says

the project started by SSE in 2013 to review the salaries of more than 1,000 employees was a major undertaking that amounted to a reorganisation of SSE which ought to have entitled him to an unreduced pension.

44. I find that it is possible to review the salaries of over 1,000 employees in any company, including SSE, without this being categorised as a reorganisation. Further, the termination agreement does not refer to Mr K leaving on the grounds of redundancy, and SSE has not exercised its discretion to provide an unreduced pension to Mr K for any other reason.
45. Mr K has suggested that at the time the termination agreement was offered, SSE was unaware that an actuarial reduction could be applied if a male member such as him who joined the Scheme before 1 April 1988 retires on or after age 60 without consent before age 63. I find that the letter of 18 September 1995 from which this information came would have been widely shared with members and the details also provided to Mr K's employers. I do not agree with Mr K's assertion that at the time he was offered the termination agreement, SSE was unaware that his benefits could be subject to an actuarial reduction.
46. SSE confirmed Mr K's retirement from 1 November 2018 in the termination agreement and the letter of 18 October 2018. However, this does not amount to consent for an unreduced pension. The provisions of the Scheme Rules are such that unreduced benefits are only payable when the employer requests this for a member who has been made compulsorily redundant.
47. I find that the termination agreement was a mutual agreement between SSE and Mr K. He signed it in 2017 when faced with a potential reduction in his pay following the project started by SSE in 2013 to review the salaries of some employees. Mr K has provided no evidence that he was required to leave SSE compulsorily due to this possibility. The Trustee and SSE have correctly concluded that Mr K does not qualify for a retirement pension with no actuarial reduction applied.
48. However, between January 2018 and June 2018 the Pensions Department sent several retirement quotations to Mr K with no actuarial reduction applied. These errors would undoubtedly have raised Mr K's expectation that he would receive an unreduced pension, especially having also been sent the Pensions Department's letter of 24 October 2018 confirming that an unreduced pension was payable.
49. When the Pensions Department eventually wrote to Mr K in January 2019 and said that this was not, in fact, the case, it would have caused him a loss of expectation. The Trustee's awards to Mr K, totalling £750, are sufficient recognition of this non-financial injustice. Mr K should contact the Trustee if he now wishes to accept the £500 element of the award that has not been paid.

CAS-46791-V2Y1

50. I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
28 October 2022