

Ombudsman's Determination

Applicant	Mrs S
Scheme	Local Government Pension Scheme - East Sussex Pension Fund (the Fund)
Respondents	Swale Academies Trust (SAT) East Sussex County Council Pension Services (the Pension Department) East Sussex County Council Human Resources Department (the HR Department)

Outcome

1. Mrs S' complaint against the HR Department is partly upheld. To put matters right, the HR Department shall pay £500 to Mrs S for the significant distress and inconvenience caused to her.

Complaint summary

2. Mrs S has complained that she was not given a retirement illustration before deciding to accept redundancy, and when she did receive a retirement illustration, the amount was substantially lower than she had been led to believe.
3. Mrs S wants to be given a financial award for the lower pension she is now receiving and the stress and inconvenience the issue has caused her.

Background information, including submissions from the parties

4. Mrs S was employed by Peacehaven Community School (**the School**), part of the SAT. She was an active member of the Fund. The Fund's Normal Pension Age (**NPA**) is 67.

5. As at 31 March 2019, Mrs S' annual benefit statement for the Fund showed that she had accrued a pension of £4,474.32 per annum. The statement said that this amount did not include any reductions that would apply if her benefits were paid before her NPA. Assuming she remained an active member of the Fund, Mrs S' pension at NPA was projected to be £9,120.06 per annum.
6. In September 2019, Mrs S' role at the School transferred to a central team at SAT, and she was offered an alternative role. As Mrs S' current role could not be changed without consultation, she was invited to a meeting to discuss the new position.
7. SAT employed the services of the HR Department for Mrs S' consultation process.
8. On 9 December 2019, a consultation meeting was held. At the time of the meeting, the School believed that Mrs S would accept the alternative role, so redundancy was not being considered. Mrs S says that at the meeting, the union representative queried why she had not received a consultation pack, which should have included a retirement illustration. The union representative requested a consultation pack.
9. On 18 December 2019, Mrs S informed the School that she did not want to accept the alternative role.
10. The School says that on 20 December 2019, it wrote to Mrs S and acknowledged her decision. It confirmed that it would be recommending her redundancy. Mrs S alleges that she did not receive this letter.
11. As Mrs S would be aged over 55 by the time of her redundancy, she was entitled to receive an unreduced pension from the Fund.
12. Mrs S says that she informed the School's Human Resources manager that she had not received a retirement illustration. She was advised to contact the Pension Department about her retirement illustration.
13. The Pension Department submits the following points:-
 - On 23 December 2019, it received a retirement illustration request for Mrs S from the HR Department for a leaving date of 31 January 2020.
 - On 6 January 2020, the HR Department revised Mrs S' leaving date to 7 January 2020 and requested a retirement illustration to reflect this.
 - On 6 January 2020, it sent a covering letter, a retirement illustration (**the First Retirement Illustration**), and a statement of employer costs (**the Cost Statement**) to the HR Department. The Cost Statement showed the additional cost of providing Mrs S' unreduced benefits at her date of leaving.
14. The HR Department forwarded the Cost Statement to SAT, but not the First Retirement Illustration.

15. On 7 January 2020, the School sent two letters to Mrs S as follows:-

- A letter confirming that the consultation period was over and the School was recommending to SAT that she should be offered redundancy (**the Consultation Letter**).
- A redundancy letter (**the Redundancy Letter**), which enclosed an estimate of her redundancy payment and the Cost Statement. The Redundancy Letter said that a retirement illustration had been requested from the Pension Department.

16. The HR Department says that on 9 January 2020, it was informed by SAT that Mrs S had rejected the alternative role and she was being offered redundancy. A copy of the Consultation Letter was attached, but not the Redundancy Letter. SAT did not notify the HR Department that Mrs S had accepted redundancy.

17. On 16 January 2020, Mrs S asked the Pension Department for a retirement illustration. She was told that it could not issue a retirement illustration directly to her, but it would be sent to the HR Department, who had already requested the information.

18. Mrs S says that she followed up her retirement illustration request with further telephone calls to the Pension Department. She was told that a request had been received and it was waiting to be processed. On one telephone call, Mrs S says that she was told that it was not possible for her to receive her retirement illustration until after her date of leaving. Mrs S did not believe this was reasonable as the information should have been provided to her during the redundancy consultation process.

19. The Pension Department says that on 17 March 2020, it received a leaver notification from SAT confirming Mrs S' leaving date as 3 April 2020. As there were documents missing, they were requested from SAT.

20. The HR Department says that on 23 March 2020, it was first made aware that Mrs S was being made redundant. Up to this point, the HR Department had not been asked to provide the retirement illustration.

21. On 24 March 2020, SAT confirmed to the HR Department that Mrs S was being made redundant and attached the Redundancy Letter. It apologised for not sending it sooner.

22. The Pension Department says that on 30 March 2020, it received the missing documentation. Mrs S' leaving date on the documentation was 4 April 2020.

23. On 1 April 2020, the Pension Department sent a retirement illustration (**the Second Retirement Illustration**) to Mrs S. The Second Retirement Illustration estimated Mrs S' pension to be £4,987.47 per annum. A pension claim form was enclosed.

24. On 2 April 2020, Mrs S contacted the Pension Department and queried the amount of pension in the Second Retirement Illustration, as it was lower than she was expecting.

25. On 3 April 2020, the following actions took place:-

- Mrs S left her role at SAT by redundancy.
- Mrs S told the Pension Department that it had informed her on a number of occasions that as she had accepted redundancy and she was over the age of 55, she would receive a full pension as though she was retiring at NPA. She felt that she had been “completely misled”. She said that during her last telephone call to the Pension Department, she had been told to use the online pension tool. The reduced pension amount shown in the pension tool should be increased by 46% to illustrate her pension on redundancy. She had based her decision to accept redundancy on this amount.
- The Pension Department told Mrs S that when she was made redundant, her pension would be unreduced, but not enhanced to her NPA. This would have been reflected in the illustration SAT should have given her during the redundancy consultation process. It apologised if this had not been made clear when she had spoken to its office. Benefits would only be enhanced to NPA for a retirement due to ill health.

26. On 8 April 2020, Mrs S emailed the Pension Department and said that SAT told her that it had provided her with sufficient information to enable her to discuss her pension with the Pension Department. She said that she had felt let down by the process and she now had to live on a reduced pension which she may have decided not to have taken if she had known about the lower amount at the time of the redundancy consultation process.

27. On 9 April 2020, the Pension Department told Mrs S the following:-

- It had provided her with the value of her retirement benefits, the Second Retirement Illustration, and the necessary forms to be able to claim it.
- She should not have received a copy of the Cost Statement.
- The only differences between the First and Second Retirement Illustrations were in respect of Mrs S’ retirement date and final salary.

28. On the same day, Mrs S responded to the Pension Department and said that:-

- She had received her pension estimate in the Second Retirement Illustration two days before her leaving date. She did not receive an estimate during the redundancy consultation process.
- She asked the Pension Department for evidence that the First Retirement Illustration had been provided to the HR Department as part of her redundancy consultation process, as she had never received it.

- She had chased the Pension Department for her retirement illustration on numerous occasions and was told that it had been requested and needed to be processed. She said that it would have been more helpful to have been told that it had already been sent to the HR Department.
 - She asked for an estimate of her pension when she reached NPA.
29. The HR Department has said that, on 15 April 2020, SAT asked when the First Retirement Illustration had been sent. The HR Department told SAT that it had not been sent, as redundancy had not been confirmed and at that stage, SAT had only been asking about redundancy and pension costs. The HR Department informed SAT that it had not sent the First Retirement Illustration because SAT first needed to confirm that redundancy would be agreed. Once redundancy had been agreed, the HR Department would have sent the First Retirement Illustration. The HR Department was not made aware of the redundancy until further paperwork had been requested.
30. On 23 April 2020, Mrs S complained to the Pension Department about not receiving her retirement illustration during her redundancy notice period.
31. On 27 April 2020, the Pension Department replied to Mrs S' complaint. It acknowledged that it should have referred her to SAT when she had requested her retirement illustration and apologised for not doing so.
32. On the same day, Mrs S complained to SAT with the following points:-
- She should have been given an estimate of her pension as set out in 9.11 of the Council's Retirement and Pensions Policy, which stated:

"The employee should be in agreement with the decision and be provided with an estimate of the pension benefits and compensation applicable in the circumstances."
 - She was led to believe from the Redundancy Letter that SAT was still waiting for the retirement illustration.
 - SAT was aware that she had not received a retirement illustration as she had said so in an email after receiving the Redundancy Letter.
 - The Pension Department did not tell her that the First Retirement Illustration had already been issued to the HR Department.
 - Because she thought that her pension was greater than it was, she had made an ill-informed decision.
 - While she understood that she was only entitled to a reduced pension, she believed that she was entitled to an award for distress and inconvenience.
33. Mrs S has said that she started to receive her pension of £4,986 per annum from April 2020, as she had not been allowed to defer it.

34. On 11 May 2020, SAT responded to Mrs S' complaint with the following points:-

- Section 9.11 of the Council's Retirement and Pensions Policy only applied to Early retirement on the grounds of the efficiency of the service, not voluntary redundancy.
- Mrs S' email following receipt of the Redundancy Letter did not imply that she wanted SAT to obtain the retirement illustration.

35. On 14 May 2020, Mrs S asked the HR Department for confirmation that it had sent the retirement illustration to SAT in January 2020.

36. On 15 May 2020, the HR Department emailed Mrs S and said that it had omitted to send the First Retirement Illustration to SAT. The HR Department was unaware that she had not received a retirement illustration until the Pension Department had informed it of the complaint she had made in April 2020. The HR Department representative said that as she had attended the consultation meeting, she was surprised that neither Mrs S nor the union representative had contacted her directly to ask for the retirement illustration. The HR Department representative apologised for omitting the retirement illustration in the response to SAT.

37. On 18 May 2020, Mrs S submitted a complaint to the Pension Department under Stage One of the Fund's Internal Dispute Resolution procedure (**IDRP**).

38. On 20 May 2020, Mrs S told the HR Department that whenever she had telephoned the Pension Department, she had been informed that the retirement illustration was being processed. On the same day, the HR Department apologised to Mrs S and said that if it had been made aware of the situation, it would have provided her with the retirement illustration straight away.

39. On 27 May 2020, Mrs S complained to the HR Department about not receiving her retirement illustration during her redundancy notice period.

40. On 1 June 2020, Mrs S started a new job with East Sussex County Council at a different school.

41. On 12 June 2020, the HR Department replied to Mrs S' complaint with the following points:-

- After receiving a request from SAT for Mrs S' pension illustration, the HR Department had sent what it believed to be her pension estimate. However, due to human error, it had incorrectly sent the Cost Statement.
- When it became aware of the situation, the correct information was sent.
- It apologised for the error and acknowledged that the delay had caused Mrs S a great deal of frustration.

42. On 16 July 2020, the Pension Department responded to Mrs S' complaint under Stage One of the Fund's IDRP with the following points:-
- It had provided the First Retirement Illustration and processed her benefits in a timely manner.
 - It had expected the First Retirement Illustration to have been shared with Mrs S by SAT, which was outside of its control. SAT had failed to share pension information with her.
 - It would have been reasonable for her to have raised the issue of the outstanding pension information during her redundancy meetings with her employer.
 - It was not a failure in a decision relating to her benefits in the Fund.
 - It did not uphold the complaint.
43. Mrs S says that on 27 July 2020, she submitted a complaint to the Pension Department under Stage Two of the Fund's IDRP. The Pension Department says that it did not receive her complaint.
44. On 14 March 2021, Mrs S re-submitted her complaint to the Pension Department under Stage Two of the Fund's IDRP.
45. On 8 July 2021, the Pension Department responded to Mrs S' complaint under Stage Two of the Fund's IDRP with the following points:-
- It was not appropriate for it to issue retirement illustrations directly to members in connection with a redundancy exercise. This was because members may not yet be aware of the redundancy exercise, or the exercise may not go ahead. A redundancy exercise also needed to be agreed by the employer.
 - It was "plausible" that Mrs S had been told she would receive a "full pension", as it would be calculated without an actuarial reduction even though it was being paid early. If Mrs S had voluntarily retired early, an actuarial reduction would have applied. Mrs S had indicated that she interpreted "full pension" to mean an enhanced pension including service accrual from the date of redundancy to NPA. The Local Government Pension Scheme Regulations 2013 only applied this enhancement on the highest tier of retirement due to ill health.
 - Given the significance of Mrs S' pension benefits in her consideration of whether to accept redundancy, she could have delayed her decision until she had received sufficient information.
46. Following the complaint being referred to The Pensions Ombudsman, Mrs S and the Pension Department made further submissions that have been summarised below.

47. Mrs S' further submissions:-

- If she had known the true impact of accepting redundancy, she would have accepted the alternative role at the School, rather than redundancy, and continued contributing to the Fund, at least until she had found a more suitable role in another school.
- Her heavily reduced pension had a substantial impact on her financial circumstances.

48. The Pension Department's further submissions:-

- It was not able to find any transcripts relating to the telephone calls it had with Mrs S about her pension.
- If Mrs S had taken early voluntary retirement on 3 April 2020, she would have received an actuarially reduced pension of £3,091 per annum.

Adjudicator's Opinion

49. Mrs S' complaint was considered by one of our Adjudicators who concluded that actions by SAT and the HR Department amounted to maladministration. The Adjudicator's findings are summarised below:-

- The Pension Department issued the First Retirement Illustration to the HR Department on 6 January 2020. However, the HR Department acknowledged that it did not forward the First Retirement Illustration to SAT, so Mrs S never received it. While the Adjudicator accepted that this was an oversight by the HR Department, this amounted to maladministration.
- While SAT had told Mrs S in the Redundancy Letter that her retirement illustration had been requested, the Adjudicator did not see evidence to suggest that SAT followed through with the request. SAT should have been aware that Mrs S had not received her retirement illustration, and this amounted to maladministration.
- The Adjudicator considered whether the maladministration caused Mrs S to incur financial loss. There was no dispute that the amount of pension Mrs S is receiving is correct. While she was under the impression that she should receive a pension as though she was retiring at NPA, she was not entitled to receive this level of pension. Her pension was calculated up to the date of her leaving, and due to her leaving by redundancy, was not reduced for being taken before NPA.

- Mrs S has suggested that she may have accepted the new role at the School, if she had been made aware earlier of the correct value of her pension. The Adjudicator could not ignore the fact that by the time Mrs S should have received the First Retirement Illustration, she had already told the School that she did not want to accept the new role. Mrs S' request to the Pension Department for her retirement illustration also took place after she had notified the School of her intentions.
- The Adjudicator noted that following telephone conversations with the Pension Department, Mrs S was under the impression that her pension would be higher than it should have been. However, she decided to accept redundancy before receiving formal notification of how much her pension would be. A reasonable action of someone in Mrs S' position would have been to wait until the relevant information had been received in writing before making a life changing decision such as accepting job redundancy. So, the maladministration did not cause Mrs S to suffer financial loss.
- The Adjudicator also noted that Mrs S had complained about the Pension Department in respect of two other aspects of her pension as follows:-
 - Despite contacting it about a retirement illustration on a number of occasions, it did not inform her that an illustration had already been issued to the HR Department. The Adjudicator accepted that Mrs S should have been informed of the position by the Pension Department, and this amounted to maladministration.
 - She was told that she would receive a pension as though she had continued working until her NPA. It was unfortunate that the Pension Department did not record this call. While Mrs S may have been led to believe this position, the Adjudicator could not make a valid argument for finding maladministration without the support of written or recorded evidence.
- The maladministration caused by the HR Department for not sending the First Illustration to SAT was the main cause of Mrs S suffering significant distress and inconvenience. The impact of the Pension Department's and SAT's maladministration were only minor contributory factors. In recognition of the distress and inconvenience Mrs S had suffered, the HR Department should pay Mrs S an award of £500.

50. Neither Mrs S nor the HR Department accepted the Adjudicator's Opinion, and the complaint was passed to me to consider.

51. Mrs S' comments are summarised below:-

- She was expecting to be given the opportunity to decide between taking the new job role and redundancy. While she informed the School on 18 December 2019 that she did not accept the alternative role, she did not accept redundancy in early January 2020. She asked to be offered redundancy as an alternative to the new job, but accepting redundancy was dependent on her receiving her pension illustration, which she had made every effort to obtain. She felt that "any decent employer" would have chased her pension illustration or potentially delayed the redundancy process. She was not aware that she could have delayed the redundancy process.
- If she had received her retirement illustration in January 2020, she would have accepted the alternative role. She obtained another job because she could not live on her significantly reduced pension, but the salary of her new job was significantly lower than her salary from the School. Therefore, she had suffered financial loss, which would affect her for the rest of her life.
- In her opinion, SAT never informed the HR Department of her redundancy because she had never formally accepted it as she was waiting for her pension illustration.
- She understood that the Pension Department now issues redundancy pension illustrations direct to employees. If this process had been in place in her situation, she would have received her pension illustration in time to make an informed decision.
- She had only met the HR Department representative once at the consultation meeting in December 2019. She could not be expected to know the redundancy process and was not aware at the time that the HR department had her pension illustration, which was why she did not contact it.
- Her new job was a seven-week fixed term contract, which was made permanent on a lower grade for 15 hours per week. It was difficult to secure employment during the pandemic, so she accepted the lower paid permanent role.

52. The HR Department's comments are summarised below:-

- At the time of its email to SAT on 8 January 2020, it was not aware that any decision had been made regarding Mrs S' redundancy.
- Between 9 January 2020 and 23 March 2020, the HR Department followed up with the School regarding Mrs S' situation but did not receive a response. During this period, it was not informed that SAT had agreed Mrs S' redundancy, nor that SAT had issued Mrs S with redundancy notice, the Redundancy Letter.

- It was not clear in its email to Mrs S on 15 May 2020 that the omission of the retirement illustration was intentional, as at that point, SAT was only asking the HR Department for redundancy costs, not her pension benefits. The HR Department was not aware that any decision about redundancy had been made. SAT was Mrs S' employer and was in direct contact with her. The HR Department was providing HR advice to SAT.

53. I have considered Mrs S' and the HR Department's comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

54. I empathise with Mrs S' position in that despite contacting the School and the Pension Department several times, through no fault of her own, she did not receive a retirement illustration until 1 April 2020, two days before her last day of employment. However, I note that on 18 December 2019, Mrs S told the School that she did not accept the alternative job role she had been offered, and as a consequence, asked to be offered redundancy. She was subsequently given notice of her redundancy on 7 January 2020.
55. I accept that when Mrs S received the redundancy notification she had not yet received her retirement illustration, and that she perhaps never formally accepted the redundancy. Nonetheless, by rejecting the alternative role, she would have been aware that redundancy was her only alternative option. As a result, in my view, when Mrs S declined the alternative job offer, she was implicitly agreeing to accept redundancy before receiving notification of the amount of pension she could expect to receive. So, while I accept that Mrs S should have received her retirement illustration in January 2020 or earlier, I do not accept that it was reasonable for her to reject the alternative job without first receiving all the required information to enable her to make an informed decision. There is no evidence to suggest that she was pressured or coerced into making this decision.
56. Mrs S has said that if she had received her retirement illustration in January 2020, she would have accepted the alternative role. But, she had already rejected the alternative job offer in December 2019, so by January 2020, it would have been too late.
57. I appreciate that the HR Department was not told that Mrs S had accepted redundancy until March 2020. However, it is not clear to me why the HR Department purposely did not include the First Retirement Illustration with the Cost Statement it sent to SAT in January 2020. By then, it knew that Mrs S had rejected the alternative job and was being offered redundancy. Indeed, the HR Department had requested a retirement illustration from the Pension Department in December 2019, and then again in January 2020 after Mrs S' proposed leaving date changed.

58. So, the HR Department was aware that in the event of Mrs S accepting redundancy she would be entitled to receive an unreduced pension, and that she would need to know the value of her pension to allow her to make an informed decision. I must also take into account the fact that on 12 June 2020, the HR Department wrote to Mrs S and confirmed that SAT had requested her retirement illustration, but due to human error, the HR Department had not sent it to SAT in January 2020.
59. I agree with the Adjudicator's Opinion that the HR Department's maladministration was the main cause of Mrs S suffering non-financial injustice. In recognition of this, the HR Department shall pay Mrs S £500.
60. While actions by the Pension Department and SAT also amount to maladministration, in my view, they did not contribute a significant impact to Mrs S' distress and inconvenience.
61. I partly uphold Mrs S' complaint against the HR Department.

Directions

62. Within 28 days of the date of this Determination, the HR Department shall pay £500 to Mrs S for the significant distress and inconvenience caused to her.

Anthony Arter CBE

Deputy Pensions Ombudsman

23 October 2024