

Ombudsman's Determination

Applicant	Mrs N
Scheme	The Social Housing Pension Scheme (the Scheme)
Respondent	Social Housing Pension Scheme (the Trustee)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by the Scheme. My reasons for reaching this decision are explained in more detail below.

Complaint summary

2. Mrs N has complained that she received benefits from the Scheme to which she was not entitled and the Trustee is now seeking recovery of the overpayment. Mrs N says that had the Trustee provided her with the correct information, she would not have retired and would have continued to work.
3. Mrs N is seeking compensation for the following alleged losses:
 - £84,000 – loss of income as a result of her husband's retirement, assuming his income continued at £24,000 per annum.
 - £10,800 – loss of income as a result of Mrs N's retirement.
 - £8,190 – rent paid in Cleethorpes (due to loss of employer's accommodation).
 - £12,152 – difference in sheltered housing.
 - £780 – cost of travel from Cleethorpes to Bradford.

Background information, including submissions from the parties

4. Mrs N was employed by Avery Tulip Court from March 1979 to March 2014. As part of her employment she was provided with accommodation for which she did not have to pay rent.
5. On 1 June 2001, Mrs N became a member of the Scheme and she transferred two existing Personal Pensions that she had into the Scheme.

6. In January 2014, Mrs N contacted the Trustee requesting that the payment of her retirement benefits start on 31 March 2014.
7. On 30 January 2014, the Trustee subsequently sent a letter to Mrs N, providing details of her retirement benefits and confirming they were due to be paid on 31 March 2014.
8. On 31 March 2014, Mrs N received an annual pension of £11,847.44 and a lump sum of £78,981.94.
9. On 8 July 2014, the Trustee contacted Mrs N telling her that it had incorrectly calculated and paid her benefits. The Trustee informed her that the overpayment amounted to £38,997.14 and asked that she make arrangements for the overpayment to be repaid. Her annual pension was to be reduced by £2,839.09 and her lump sum was reduced by £36,158.06.
10. The Trustee followed this up with a letter which confirmed the overpayment amounts. The Trustee explained that the overpayment was a result of it incorrectly recording the date Mrs N joined the Scheme. The Trustee had this recorded as 4 March 1979, the date Mrs N joined her employer, but the actual date of joining the Scheme was 1 June 2001.
11. The previous Scheme administrators advised that from 6 October 2014, Mrs N's pension would be reduced to the correct level and the overpayments would need to be paid back.
12. Mrs N complained to the Trustee. She said that she relied on the information provided in the incorrect benefit statements and combining her expected pension with her husband's, they both decided to retire. She further said that based on the combined income they chose to move away from Bradford to Cleethorpes. Mrs N said they both made irrevocable decisions by leaving their employment and the Scheme should not reduce her pension or seek recovery of the overpayments made.
13. The Trustee did not uphold her complaint and said that although an error had occurred, it is bound by the rules of the Scheme and can only pay benefits to which Mrs N is entitled.
14. The Trustee addressed Mrs N's complaint that she and her husband would not have retired had she been provided with the correct benefits from the outset. The Trustee explained that Mrs N was 68 years of age when she retired and her husband was 65 so it is not unreasonable to assume that they would want to retire given their age. The Trustee added that as Mrs N's accommodation was provided by her employer, she would always have had to move house and relocate when she retired.
15. Mrs N appealed the Trustee's decision. She said that she should not have to repay the overpaid amount and that the higher payments should continue in the future. She also complained about her pension payments being reduced to the correct amount whilst an investigation was in progress.

16. On 2 April 2015 [an Appeals Panel] (**the Panel**) considered her appeal. The Panel wrote to Mrs N rejecting her appeal stating that they supported the Trustee's initial decision. The Panel said that Mrs N should have realised that the amount of her pension and lump sum were overstated. Their reasoning was that Mrs N's Membership certificate was issued in 2001 which stated she entered the Scheme on 1 June 2001, and although subsequent benefit statements incorrectly showed a date of entry of 4 March 1979, Mrs N would have known this was incorrect and could have queried it.
17. The Panel also said Mrs N should have realised that there was an overpayment when she was offered an annual pension of £17,228, which is almost as much as her annual pay of £17,442.
18. The Panel recognised that the error may have caused Mrs N distress and awarded her £1,000 as compensation, which would be deducted from the repayments.

Adjudicator's Opinion

19. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-
 - The Limitation Act 1980 (**LA 1980**) does not apply here. In Mrs N's case, time started running on 31 March 2014 when the first overpayment occurred, and it was from that date that the Trustee could, with reasonable diligence, have discovered the mistake.
 - Mrs N is only entitled to the correct benefits in accordance with the Scheme regulations and not the incorrect ones quoted in error, unless Mrs N has a defence that her financial position has changed as a result of the overpayment.
 - Mrs N contends that due to the incorrect information given to her she made the decision to retire. However, it was Mrs N's responsibility to check her statements and report any issues. In addition, it should have been clear to Mrs N that the date recorded for her joining the Scheme was wrong and it was actually the date she commenced her employment. As Mrs N joined the Scheme at a much later date, in May 2001, it was reasonable to expect her to have been aware of the error.
 - The Adjudicator was satisfied that it was reasonable for Mrs N to have realised that the incorrect benefit provided was wrong and queried it from the outset. She said, this was because the annual pension Mrs N originally received was similar in amount to her salary.
 - Although Mrs N says she would have continued working until age 70 and her husband would have continued working for a further five years, both of them had reached normal retirement age at the time she took her benefits so, the Adjudicator was of the view that it was likely they would have retired at that time.

- Although Mrs N and her husband relocated following their retirement having lost the free accommodation, they would always have had to give up the accommodation on retirement.
 - The Scheme should be able to recover the overpayment and the Adjudicator agreed that the level of compensation awarded by the Trustee, a payment of £1,000 for distress and inconvenience, was reasonable in light of the distress caused to Mrs N by the Trustee's error.
20. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which were:-
- The Trustee has been negligent in administering the Scheme and as a result she has incurred significant losses.
 - She was more than capable of continuing to work and the decision to retire was based solely on the negligent information provided by the Trustee.
 - She was a home manager who reviewed documents as they were provided to her. The start date for the Scheme reflected her start date with her employer and this did not seem unreasonable to her.
 - She is claiming damages for negligence, and is not defending any claim for overpayment.

Ombudsman's decision

21. Mrs N maintains that the Trustee has been negligent in administering the Scheme and as a result, she has incurred significant losses. Mrs N says that the decision to retire which led to the alleged losses was based on the incorrect information provided by the Trustee and she strongly refutes that she was incapable of continuing to work. She also says that it was reasonable for her to rely on the incorrect documents she received from the Trustee.
22. Firstly, I consider that the error made by the Trustee in issuing the incorrect retirement figures was maladministration. However, I expect a scheme member to review and question the statements they receive. In this case an obvious error had occurred in which the Trustee mistakenly showed an incorrect date of joining the Scheme. For the reasons given by the Adjudicator, I find that Mrs N ought to have known that the figures quoted on 31 March 2014 were incorrect.
23. Mrs N maintains that had she been given the correct information from the outset, she would not have retired. I appreciate that Mrs N holds this view, however I am not persuaded that she would have continued working as she asserts. This is because, Mrs N had contacted the Trustee in January 2014 requesting that payment of her retirement benefits commence on 31 March 2014. This is a clear indication that she had intended to retire prior to receiving the incorrect retirement figures. In addition, I

have seen no evidence that once she was notified about the overpayment she tried to reverse the decision and ask for her job back.

24. Consequently, I do not find that Mrs N has sufficiently demonstrated a change of position defence.
25. I consider that the £1,000 compensation offered to Mrs N by the Trustee for the significant distress and inconvenience caused by its error is satisfactory redress in this instance. It is for Mrs N to contact the Trustee if she wishes to accept the offer.
26. Therefore, I do not uphold Mrs N's complaint.

Anthony Arter

Pensions Ombudsman
1 June 2017