

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY PENSIONS OMBUDSMAN**

<b>Applicant</b>	Mr Michael Rocha
<b>Scheme</b>	Selex Pension Scheme ( <b>the Scheme</b> )
<b>Respondent(s)</b>	Trustees of the Selex Pension Scheme ( <b>the Trustees</b> )

**Subject**

Mr Rocha complains that the Trustees provided an incorrect pension statement which led him to accept voluntary redundancy.

**The Pensions Ombudsman's determination and short reasons**

The complaint should not be upheld against the Trustees because it was not reasonable for Mr Rocha to rely on the statement, given an identifiable discrepancy – and I do not consider that had he known the true figure he would have acted differently.

## DETAILED DETERMINATION

### Material Facts

1. Mr Rocha was employed by Selex Communications (**Selex**) and had been in continuous employment since 1988. Until April 2005 his employment was with BAE Systems and he was a member of the BAE Systems Pension Scheme (**the BAE Systems Scheme**). He became a member of the Scheme in 2005 when his employment was transferred to Selex. Mr Rocha's normal retirement age was 65, which at the time was three years away.) His normal retirement age was 65, in May 2013.
2. Pension entitlements were not transferred from the BAE Systems Scheme to the Selex Scheme so Mr Rocha has a deferred pension in the BAE Systems Scheme. His benefits under the Selex Scheme are calculated based on pensionable service in both schemes and final salary with Selex from which a deduction is then made exactly equal to the amount payable from the BAE Systems Scheme. This is known as the "make whole" arrangement.
3. Benefit statements that Mr Rocha received from the Scheme before the events to which the complaint relates showed the total benefits from both schemes as well as the Scheme entitlement on its own.
4. The nearest statement to the events that Mr Rocha is complaining about is as at 5 April 2009. It says that if Mr Rocha left service at that date his pension would be £5,630.23 at age 65. It also says that the Scheme pension at age 65 if he remained in service would be £8,162.58. The combined pension from the Scheme and the BAE Systems Scheme is given as £11,809.02.
5. Mr Rocha has also provided a deferred benefit statement from the BAE Systems Scheme, which shows that as at 5 April 2009 the pension stands at £6,838 a year. It is made up of two parts – "Pension relating to Scheme membership" of £3,535 a year and "Pension relating to transferred in and/or credited Service" of £3,016 a year.
6. Selex announced plans to offer voluntary redundancy in early 2010. On 1 March Mr Rocha made an informal request for redundancy information and afterwards requested a pension statement from the administrators of the Scheme, Aon Hewitt (**Aon**). He was sent a statement dated 22 March 2010 showing a pension of £5,663.40 a year based on a retirement date of 1 April 2010.

7. This – and figures given previously in statements as the Scheme pension – were wrong. Apparently the benefits that Mr Rocha had transferred into the BAE Systems Scheme were not included in the deduction.
8. Mr Rocha also received a benefit statement from the BAE Systems Scheme based on a retirement date of 1 April 2010, showing a pension of £6,366.87 a year.
9. On 31 March Mr Rocha asked for figures for his pension at his normal retirement date. He was told by Aon that they would not be provided more than 12 months in advance.
10. Mr Rocha agreed to accept voluntary redundancy. He was made redundant on 25 June 2010. His pensionable salary at the time was £26,368. He received a redundancy payment of £31,885.56 from Selex, but did not take his pension.
11. Some four months later, Selex announced plans to make employees compulsorily redundant in the department Mr Rocha worked in, because it was being disbanded.
12. The Trustees say that on 22 July 2010 – so after Mr Rocha's redundancy – Aon sent him a statement of entitlement on leaving. It said that his pension at the date of leaving was £3,182.36 a year, which was subject to revaluation up to the normal retirement date. The writer of the covering letter said "Unfortunately a BAE transfer-in benefit was not deducted from your Gross SELEX Pension, and as a result the SELEX figures that we originally quoted were incorrect. I apologise for any inconvenience this may have caused."
13. The Trustees also say that in December 2011 Mr Rocha was sent a further statement of his deferred benefit which was correct.
14. Mr Rocha says that he did not receive either the 22 July 2010 letter and statement, or the December 2011 statement.
15. Mr Rocha received a pension statement from Aon in October 2012. The statement said that his entitlement was £3,251.88 a year. On 10 October 2012, having spoken to Aon on the phone, Mr Rocha wrote to Aon asking about the discrepancy and saying that the difference "would have made a huge impact on [his] career choices".
16. Mr Rocha then took the matter up with the Trustees, first consulting the Pensions Advisory Service (**TPAS**) and then through the Scheme's dispute

resolution process. What follows is a summary of the position of the parties as expressed then and in submissions to my office.

17. Mr Rocha took his pension from both schemes at age 65. The total entitlement, all taken as pension, was £11,828.64. In each case he chose a reduced pension plus a lump sum. His BAE share was £6,430.68 with a lump sum of £22,331.65 and his pension from the Scheme was £2,785.92 with a lump sum of £7,008.17.

### **Summary of Mr Rocha's position**

18. Mr Rocha's basic position is that he would not have taken voluntary redundancy if he had been given the correct figures.
19. He says that he did not seek other employment after his redundancy because he trusted the figures. He did not draw his pension at the time because of the reduction for early payment. Although he did not have figures for his normal retirement age when he applied for voluntary redundancy he assumed that the pension would be more than if he retired early.
20. He did not get the letter of 22 July, but if he had it would have been after his redundancy and so too late. In the event the error came to light in October 2012 and was confirmed in December, only four months before his normal retirement date of 1 May 2013.
21. The "make whole" structure of the Scheme is complex and Aon were in a better position to identify any errors than he was.
22. He considers that Selex would have been able to redeploy him as they did in other cases, rather than make him redundant.
23. His loss is £23,833, based on loss of earnings (34 months at £19,000 net) less the redundancy pay. (There is no loss of pension because revaluation has exceeded additional accrual based on a fixed salary).

### **Summary of the Trustees' position**

24. The "make whole" structure meant that Mr Rocha needed to look at the benefits from both schemes in total. The Scheme's literature illustrates the importance of doing that.
25. The position under the two schemes combined was consistent with what ought to have been Mr Rocha's expectations. For example, the 2009 benefit statement

shows a total pension (without a lump sum) at retirement of £11,097.81, including an (overstated) Selex pension of £8,162.58. Mr Rocha's pension (before taking lump sums) on retirement in May 2013 was £11,828.64, including a correct Selex element of £3,175.23.

26. Mr Rocha did not in fact draw the pension to which the incorrect estimate relates, but waited until his normal retirement age. He decided to proceed with voluntary redundancy knowing that he did not have certainty as to his pension at normal retirement date (having been told that figures would not be provided at that time).
27. The statement that Mr Rocha did have was as at 1 April, whereas his redundancy was on 24 June. He did not have a statement as at that date.
28. The Trustees should not be liable for any loss relating to the July 2010 letter not having been received.
29. The redundancy lump sum that Mr Rocha received was attractive in its own right.
30. Of the ten members of Mr Rocha's former team, only four remained in employment by the time Mr Rocha reached his normal retirement date. Two others volunteered for redundancy, one resigned, one reached retirement date and one was made compulsory redundant. Selex HR had said that Mr Rocha's skill set was not required and that he "may well have found himself compulsorily redundant" had he not taken voluntary redundancy.
31. Mr Rocha had made no effort to mitigate any loss.

## **Conclusions**

32. Mr Rocha says he relied on the 22 March 2010 statement from the Scheme. It overstated his Scheme pension by £3,286 a year. The error that it contained was not offset by an equivalent error in the BAE Systems Scheme statement. The Trustees say that the Scheme's literature emphasises the importance of looking at both schemes together. That is what Mr Rocha did. The total that he would have seen as a pension payable from 1 April 2010 was over £12,000 a year. Based on the two statements alone, Mr Rocha could not have identified the error.

33. But the Trustees say that the combined figure shown in previous benefit statements was correct and Mr Rocha should have noticed there was a discrepancy. I agree that if Mr Rocha had checked he would have seen, for example, that the 2009 statement showed just over £11,800 in total, payable from 2013 and including three years' additional pension accrual. Mr Rocha says that he did not take the pensions in 2010 because he knew there would be a reduction for taking it early. So he would have known that the total pensions from 1 April 2010 should not be more than the pension estimate for 2013. If he had compared he would have identified a likely error somewhere in the figures he had from both schemes (he could not immediately have known which).
34. The discrepancy appears to have existed in statements over a period of years. The figure shown as the overall pension from both schemes would have been less than the sum of the individual schemes' pensions. While Mr Rocha was not at fault in any way, he cannot rely on a mistake that he ought reasonably to have identified for himself. Whereas he could not have identified it in the statements he had for retirement on 1 April 2010, it is obvious in the earlier statements.
35. The question I have to decide is whether a reasonable person standing in Mr Rocha's shoes should have identified the error. Mr Rocha was a lay person – and he ought to have been able to operate from a starting point that the figures he was given were correct. He would not be required to undertake detailed calculations. But he had received inconsistent figures within a year of having received correct ones. In my view the discrepancy ought to have been evident.
36. In the of the above finding, it is a secondary matter, but Mr Rocha faces a further difficulty in that he says that he relied on statements for retirement at 1 April 2010 in taking redundancy, but he did not in fact retire until 2013. He was told that he could not have an estimate as at age 65 until nearer the time, so in a sense he had no choice. He understandably says that he expected the pension to be more by age 65, because it would not be reduced for early payment, but he clearly felt able to take redundancy without a very accurate view of his pension at 65. At most he could have told himself that it would be more than £12,000 in total – but he did not know quite how much more.
37. That indicates to me that the figure was not critical in his decision. I often remark that it is very difficult for people to reconstruct their decisions with

hindsight. I have no doubt that Mr Rocha's pension was material. He obtained estimates and asked pertinent questions. But so would the redundancy lump sum and the additional leisure time have been. I have taken into account that Mr Rocha is quite clear in his own mind that he would have acted differently. He is not required to prove that he would beyond doubt, but I cannot simply accept what he says. I have to form my own view of what would, on the balance of probabilities, have happened if he had received the correct figures. I cannot say that it would have been significantly different from what did in fact happen.

38. Mr Rocha's actual entitlement was £11,828. It is less than the 'more than £12,000' (see paragraph 36) that Mr Rocha might have been expecting, but by an uncertain amount. In summary, while I consider that he should have noticed that the discrepancy existed, I do not think that if he had been able to assess the difference between expectation and actuality at the time, he would have acted differently.
39. So, looking at the whole picture in the round, I do not find that it is more probable than not that Mr Rocha would have rejected voluntary redundancy if he had had correct pension figures.
40. That being so, I do not need to decide whether Mr Rocha would have been made redundant anyway (the evidence that I presently have is insufficient to find that he would). Nor do I need to decide what, if any, steps Mr Rocha could or should have taken to mitigate his position or when he should have done so.
41. I do not uphold the complaint.

**Tony King**  
Pensions Ombudsman

12 December 2014