

## Ombudsman's Determination

<b>Applicant</b>	Miss Ann O'Riordan
<b>Scheme</b>	Marks and Spencer Pension Scheme (the <b>Scheme</b> )
<b>Respondent(s)</b>	Marks and Spencer Pension Trust Limited (the <b>Trustee</b> )

### Complaint summary

Miss O'Riordan complains that the Trustee provided incorrect information about the application of the state pension deduction (the **Deduction**) to her pension entitlement. She says that the dispute centres on the difference between 'payment provision' in the rules of the Scheme and 'Benefit Calculation Provisions'. She feels that because she was already receiving a pension, the Trustee cannot recalculate the benefit and introduce a new reduction.

### Summary of the Ombudsman's determination and reasons

The complaint should be partly upheld against the Trustee because even though it applied the Deduction at the correct age, it provided inaccurate and misleading information about her entitlement.

## DETAILED DETERMINATION

### Material Facts

1. Miss O’Riordan’s date of birth is 11 August 1952. She was employed by Marks and Spencer (the **Company**), but left their employment in September 1995. During this time she was a member of the Scheme. Once Miss O’Riordan left employment, she became a deferred member of the Scheme.
2. The Scheme rules (the **Rules**) have been revised on a number of occasions over the years. At the time when Miss O’Riordan left employment in 1995, the Rules then in force were set out in a Trust Deed and Rules dated 7 August 1984 (**the 1984 Rules**).
3. Rule 5(a) of the 1984 Rules said that on retirement at or after normal Retirement Date, a member would be paid a pension equal to 1/45 of their final pensionable salary for each year of service “less the State Pension Deduction”.
4. The State Pension Deduction was defined as  
“an amount equal to 1/40<sup>th</sup> of the full yearly rate... of the basic component of the Category A retirement pension described in the Social Security Act 1975 payable from pensionable age for a single person who fully satisfies the relevant contribution conditions.”
5. Rule 5(a) also said that the total amount to be deducted  
“... shall not exceed the yearly rate... of the basic component of the Category A retirement pension described in the Social Security Act 1975 payable from pensionable age for a single person... and provided further that the reduction in the amount of the yearly pension due to the State Pension Deduction shall be ignored until the Member reaches pensionable age.”
6. Under Rule 15, a deferred member with more than five years’ service was entitled to a deferred pension when they reached Normal Retirement Date or pensionable age, whichever was earlier. This would be calculated in the same way as if Rule 5 applied, but with reference to their final pensionable salary at the date of leaving employment (though with a deduction for early payment).
7. The Normal Retirement Date under the Scheme was age 65 for men and age 60 for women.

8. The effect of the Rules was that where a member received their pension under the Scheme before reaching state pension age (**SPA**) they would receive their pension in full, but once the member started to receive their state old age pension, the amount of state old age pension received by them would be deducted from the pension paid to them under the Scheme.
9. The 1984 Rules were amended by a Supplemental Deed date 25 November 1988 (**the 1988 Rules**), but those amendments did not affect Rule 5 or the definitions set out above.
10. The Social Security Act 1975 defined “pensionable age” as “in the case of a man, 65; in the case of a woman, 60.”
11. Miss O’Riordan took her pension from the Scheme in August 2002 to coincide with her 50<sup>th</sup> birthday (i.e. 11 August 2002). On 6 August 2002 the Trustee wrote to Miss O’Riordan informing her of the retirement benefits payable to her from 1 September 2002. The letter stated that the pension figure would reduce by not more than £4,241 per annum, depending on the rate of inflation, from her first payment after 6 January 2015 when she reaches SPA.
12. On 10 August 2011 the Trustee wrote to Miss O’Riordan stating that when she retired she was advised that her pension would be reduced by £4,241 from 6 January 2015, the date she was expected to reach SPA. The Trustee added that as a result of the Government’s proposal to change SPA, it had recently reviewed how the Deduction is applied to her pension. The result of the review was that the Deduction should be applied when she reaches age 60 and not 6 January 2015, as previously advised. The letter offered an apology for having provided incorrect information regarding the timing of the Deduction.
13. By a Deed dated 20 September 2011 (**the 2011 Rules**), the Trustee modified the Scheme Rules, replacing the existing definition of “State Pension Age” with a new definition:
  - i. for members who left service before 17 May 1990, pension age means, for a woman her 60<sup>th</sup> birthday, and for a man, his 65<sup>th</sup> birthday;

- ii. for members who left after 17 May 1990 but before 1 January 1997, pension age means  
  
for service before 17 May 1990, for a woman her 60<sup>th</sup> birthday and for a man his 65<sup>th</sup> birthday  
  
for service after 17 May 1990, the meaning given in the Pensions Act 1995 as originally enacted; being for a man, his 65<sup>th</sup> birthday and for a woman, an age between her 60<sup>th</sup> and 65<sup>th</sup> birthday, depending on her date of birth, as set out in a table;
  - iii. for members who left service after 1 January 1997, the same meaning as in paragraph ii above;
  - iv. for a member who falls within paragraph ii and has service both before and after 17 May 1990, the Trustee may, with consent of the Company, make such estimates as they think appropriate in respect of each such period.
14. The change was expressed to be by way of clarification, and to have effect only as consistent with the power to change the Scheme within the Rules and so as not to adversely affect any subsisting rights pursuant to section 67 of the Pensions Act 1995.
15. The explanatory booklet for the Scheme dated April 1997 states, under the section headed 'Retiring Early': "There will be no deduction for the State Basic Pension until you reach State Pension Age". 'State Pension Age' is defined in the booklet as age 65 for men and 60 for women, but states that this would be equalised at 65 for men and women over a 10 year phasing-in period as from 2010.
16. On 8 September 2011 the Trustee wrote to Miss O'Riordan referring to its letter of 10 August and confirming that the deduction at age 60 will be £2,715.00 and the balance of £694.00 will be deducted as at 31 January 2015.
17. Mr Cotter, Miss O'Riordan's adviser, wrote to the Trustee on 27 February 2012 complaining on her behalf. He said:
  - He relied on the information given in the Trustee's letter of 6 August 2002 when advising Miss O'Riordan. This letter showed that the Scheme had

encompassed the changes to retirement dates incorporated in the 1995 Pensions Act and the contents of that Act was known to the Trustee when she left service.

- The 1997 Scheme booklet states that there will be no deduction for the basic state pension until the member reaches SPA.
- He did not ask for a copy of the rules of the Scheme as it would be unacceptable for a lay person to appoint someone to check the validity of the information provided by the Scheme, against the complex legal nature of the full trust wording. However, he believes that it was perfectly reasonable for him and Miss O’Riordan to expect her pension to continue uninterrupted.
- Miss O’Riordan’s only source of income was her pension from the Scheme plus some income from investments. She stopped working to care for her parents both of whom have subsequently passed away. Although she had a part time job, she decided that she could manage to get by without working and this was because she had some savings which could be used until her pension started in 2002.
- In December 2000 she bought a house which she currently lives in. The running cost of the house was within her budget based upon her pension income. She did not need to take any further employment during the last few years because she managed her expenses carefully.
- As her financial adviser he relied on the information provided by the Trustee when advising his client. She was looking to generate some extra income from her investments and to diversify her investments away from solely holdings in the Company’s shares. The major factor he used in assessing her ability to take a drop in her income from her investments, due to market volatility, was her other income sources. He regarded the stability of her pension from the Scheme highly and advised her that she could invest in more risky investments and take a longer term view. She went ahead in 2010 with the investment strategy he had proposed which was to last for at least five years. Had they been aware that her income was going to reduce by

such a large amount for over two years so soon after the investments were made, he would have recommended a different course of action.

- She also used £6,500 of her savings to change her car in the Spring of 2010. She would not have taken this course of action had she been aware that her pension was not certain.
- He does not believe that it is now possible for her to make up the shortfall through gainful employment as she is approaching 60 and has no work experience for the last nine years.

18. The Trustee wrote to Miss O’Riordan on 27 February 2012 under the Scheme’s internal dispute resolution procedures. It referred to Mr Cotter’s letters of 21 December 2011 and 23 February 2012 and said that, after careful consideration of the matter, she was receiving her correct entitlement under the Rules including, in particular, the Deduction that had been correctly applied in two parts, i.e. the largest part at age 60 and the balance at 1 February 2015. It added that taking everything into account, it did not feel that she had sufficiently demonstrated either reliance or actual financial loss in consequence of any reliance.

### **Summary of Miss O’Riordan’s position**

19. She left service in 1995 and at that time it was reasonable to expect the Trustee to have been aware of the changes to the SPA for women. It would have been necessary to consider the changes following the Pensions Act 1995. These changes were first covered in the 1998 Rules.
20. Under the 1998 Rules the definition of SPA was amended and this together with the provisions of rules 16.2 and 16.5 meant that the state pension deduction would not be applied until she reached her revised SPA, i.e. 65, as originally envisaged by the Pensions Act 1995.
21. As Miss O’Riordan started to receive her pension before her revised SPA, the Deduction cannot be applied before that age and the rules clearly state that for her it would be the later date of January 2015.

22. This was consistent with the Scheme explanatory booklet dated April 1997 which, although by that date she had left the Company, applies equally to her as it was stated to be a guide to permanent staff engaged up to and including 31 December 1995. The booklet informed members that if they retired before SPA, there would be a gap between the start of their pension from the Scheme and start of their state basic pension. Members were advised that “*The Scheme will bridge this gap by paying you your M&S pension without any reduction for the Basic State Pension until you reached State Pension Age*”.
23. The booklet also advised members that the SPA would eventually be age 65 for everyone and suggested women born after 6 April 1950 should check with the local DSS to find out what their revised SPA would be. This is also consistent with the advice she received during a telephone conversation in April/May 2009 when she queried the date from when the Deduction would be applied.
24. The letter dated 6 August 2002 from the Trustee confirmed that the Deduction would not be applied until the first payment after 6 January 2015.
25. Throughout her period of employment with the Company, the SPA for females was age 60. However, under the original provisions of the Pensions Act 1995 changes were introduced, effective from 6 April 2010, whereby over the ten year period between April 2010 and April 2020 the SPA for females increased gradually so that by 6 April 2020 it would be age 65. For her this meant that the revised SPA would be approximately 62 years and four months, i.e. on 6 January 2015.
26. The 1979 Scheme booklet stated that the normal retirement age for female members was age 60. The section on early retirement (i.e. retirement from active employment) stated that the Deduction would be applied from “state retirement age (60 female or 65 male)”. The section relating to the benefits due on leaving employment was silent on what benefits were payable if a deferred member elected to draw their pension before their normal retirement age, but it would not be unreasonable to assume that the Deduction would not be applied until age 60. The 1984 Scheme booklet set out the same information, although the wording was slightly different.

27. Regarding the Scheme's documents (the Trust Deed and Rules), in force at the time Miss O'Riordan's employment ended, her benefits would be governed by the Rules dated 29 November 1977 as amended by the Deeds dated 30 November 1977, 8 October 1980, 7 August 1984 and 25 November 1988.
28. The changes made to the Scheme following the Pensions Act 1995 were first covered in the Deed dated 6 May 1998 which replaced the previous Rules with effect from 1 January 1997. Under the 1998 Rules the calculation of the Deduction remained unchanged but a new definition of SPA was introduced: "State Pension Age has the meaning given by paragraph 1 of Part 1 of Schedule 4 to the Pensions Act 1995 (which is age 65 for men and women born after April 1955; age 60 for women born before 6 April 1950; and age between 60 and 65 for women born between 6 April 1950 and 6 April 1955)".
29. A new rule (Rule 16.2) was introduced for members who joined the Scheme before 1 January 1996. This stated that where the member's pension started to be paid before SPA, the Deduction would not be applied until SPA. However, the provisions of Rule 16.5 which applied to members who had left the Scheme before 1 January 1997 stated that the benefits for members would be as described in the Rules in force previously (i.e. as per the Rules in the 1996 Deed). But this rule then went on to state: "The benefits will, however, be paid as described in these Rules ...and Rules 10 to 28 of these Rules will apply in place of any corresponding provisions of the previous Rules". Therefore the letter dated 6 August 2002 from the Trustee was in fact correct as the pension was in payment.
30. It is clear that prior to the review referred to in the Trustee's letter dated 10 August 2011, the Trustee believed that the Deduction would only apply from her revised SPA.
31. Since the 1998 Rules there have been several deeds completed, but the only deed which specifically affects the date from which the Deduction would be applied is the deed dated 20 September 2011. This deed introduced by way of clarification a new definition of "Pension Age", which if applied to her would mean the Deduction would be applied in part from age 60 and in part from May 2018. She believes that the terms of the 1998 Rules gave her a subsisting right for the Deduction not to be



applied until her revised SPA of 30 November 2020, and to do so would be in contravention of clause 4 of the 2011 Deed and would breach her subsisting right.

**Summary of the Trustee’s position**

32. Miss O’Riordan left service in 1995 and her entitlement to benefits is governed by the Rules in force at the date when she left service – the 1984 Rules. The 1988 Rules also apply, but did not make any changes in her particular case. These provide that the Deduction should be applied at “State Pension Age”. In respect of pension attributable to pensionable service before 17 May 1990, this is age 60. In respect of pension attributable to pensionable service on or after this date, this is 64 and two months.
33. The Rules have since been amended at various times. In general, subsequent versions of the Rules are stated to have no effect on the calculation of benefits in respect of previous leavers.
34. In 2011, in light of government changes to the state pension age, the Trustee and the Company undertook a review of the effect of those changes on the Scheme’s state pension age, and took legal advice on this. It concluded that the correct position was as follows:
  - (a) where the Rules define the Scheme’s state pension age by reference to statutory provisions, they should be construed by reference to legislation in force as at their date, unless the Rules specifically provide otherwise;
  - (b) in some cases the Rules specifically refer to a designated age as the Scheme’s state pension age;
  - (c) the Trustee must, however, ensure that all benefits attributable to service from 17 May 1990 comply with the equalisation requirements imposed by the Barber judgment.
35. The Trustee and the Company entered into a Deed confirming this position in 2011.

36. As stated above, Miss O’Riordan’s benefits are governed by the 1984 and 1988 Rules. These Rules provide that the Deduction should be applied at “State Pension Age”, which is defined as age 60 for women. There is no statutory reference included in the definition of “State Pension Age”.
37. Part of Miss O’Riordan’s pension is attributable to pensionable service on or after 17 May 1990 and therefore the Deduction in respect of that period of pensionable service is applied at the date which will be applied at her state pensionable age under the Pensions Act 1995, which was age 62 and four months.
38. It acknowledges that Miss O’Riordan had been provided with correspondence which stated that the Deduction would be applied from January 2015. However, the provision of incorrect, incomplete or misleading information does not give rise to an entitlement. A member is only entitled to the pension due to them in accordance with the Rules; it has no power to confer benefits in excess of those under the Rules. The documents were all summary documents and could not reasonably be expected to confer any entitlement.
39. The Company did have power to confer benefits in excess of the Rules, via discretionary benefits/augmentation provisions. However, there is no evidence that the Company has used such power in her case. Therefore, it does not agree that the provision of incorrect information on retirement amounts to a contractual obligation which it is obliged to honour.
40. Miss O’Riordan has not provided evidence to show that the investment choices she made actually resulted in any financial loss. The test is whether she has suffered actual financial loss as compared to the position she would have been in if the correct information had been provided to her at the outset.
41. The decision to retire is generally complicated and is not solely linked to expected income, particularly in the short term. For example, factors such as lifestyle or health may strongly influence such a decision. It notes that her decision to give up her part-time job appears to have pre-dated the letter containing the inaccurate date of the Deduction on which she claims to have relied in making that decision. She has had the benefit of not working and having more leisure time.

42. Once she was informed of the correct entitlement she could have sought employment to make up lost income, but she has not provided any evidence that she has looked for work either full or part-time. Even if she has suffered financial loss, it is not aware of any steps she took to mitigate that loss. The comment that it would now not be possible for her to make up the shortfall through gainful employment because of her age and lack of recent work experience, amounts to mere assertion and there is no evidence to support this.
43. There is no evidence that she would not have purchased the house in December 2000 had she been given the correct information at the outset, in particular as she was not sent the letter containing the inaccurate date of deduction until 2002. She has the benefit of the property and there has been no suggestion that she might lose the property, have to sell it at a loss, or incur additional costs in (for example) borrowing to support her financial commitments. In meeting the costs of regular maintenance she benefits from maintaining and increasing the value of her property as a result of home improvements.
44. She has also benefitted from the use and enjoyment of her car and again there has been no suggestion that she might have to sell it at a loss, or incur additional costs. Again, no evidence has been provided of financial loss being incurred or that she would not have made the purchase had she known of her correct entitlement.
45. While incorrect information given to her may have given her an expectation that will not be met and may require her to adjust her lifestyle, it is not able to identify any reliance and loss for which it ought to compensate her.

## **Conclusions**

46. This is one of a number of complaints brought by female members of the Scheme about the date when the state pension deduction will be made.
47. Although not referred to as a bridging pension in the Rules, the way pensions are paid under the Scheme is in effect a form of bridging pension – an additional amount is paid to members who retire and start receiving a pension from the Scheme before reaching SPA. When they become entitled to their state pension an

amount equivalent to the basic state pension is then deducted from their Scheme pension, so that they continue to receive the same amount of pension overall.

48. The position under the Scheme is that a deduction is made from the member's Scheme pension when they reach SPA (as defined in the Scheme Rules), which is referred to as the "State Pension Deduction". For members who left service before 17 May 1990, this happens at age 60 for women and 65 for men. That is because those were the respective SPAs in force at that time and it was then permissible to have different pension ages for men and women.
49. As a result of the decision in the Barber case, from 17 May 1990 it was unlawful to have different retirement ages for men and women. All pension schemes were required to equalise the retirement age for male and female members. But they did not have to do this immediately – schemes were allowed a period of time (known as the 'Barber window') to equalise the retirement ages for men and women.
50. For members who left service before 17 May 1990, the Scheme applies the Deduction at age 60 for women and 65 for men.
51. What was not foreseen at the time was that there would be further changes to SPA; the government has made – and is continuing to make – changes to the state retirement age, which will continue to increase (indeed it has recently announced that SPA will increase to 67 on a date between 2026 and 2028 and it will continually review the retirement age in light of the increase in people's life expectancy).
52. The outcome of these changes is that the definition of SPA for the purposes of the Rules has not kept pace with changes in the statutory SPA. So Miss O'Riordan now has a SPA of 64 years and two months and will receive her basic state pension on 6 January 2015. The result of this is that the bulk of the Deduction will be made in 2012 when she reaches age 60. So there will be a gap of over two years when her Scheme pension will be reduced, but she will not yet be receiving her basic state pension.
53. Miss O'Riordan has not alleged that she is the victim of unlawful discrimination. However, I have received a number of complaints from members of the Scheme about the state pension deduction, each raising different but related issues. During

the course of the investigations into these complaints a number of issues arose, including the question of whether there was unlawful discrimination between men and women. I considered that point in another case, where my determination was issued on 10 October 2013 (PO-304 Thew). My conclusions are set out in detail in that published determination and there is no need for me to go through them again in detail.

54. It follows from my conclusion in Mrs Thew's complaint that Miss O'Riordan has not suffered unlawful sex discrimination, but there remains the question of whether her pension has been dealt with in accordance with the Rules.
55. This question turns on the definition of SPA and, thus, the date at which the Deduction should be applied. Miss O'Riordan understandably says she took this to mean the age at which she would actually receive her state pension. However the starting point for determining a member's benefits is always the Rules, so the definition must be that set out in the Rules.
56. In the 1984 Rules, it is clear that the Deduction only comes into effect when the member reaches the age at which they become entitled to their state pension – Rule 5 states that the Deduction “shall be ignored until the Member reaches the “pensionable age”.
57. There was clearly an intention to smooth pension income – the purpose of the Rule is to ensure that the amount of pension received stays the same regardless of whether any state pension is being paid; no deduction is to be made that is greater than the actual state pension. Although amended by subsequent Deeds, there is nothing in the later Deeds that specifically overrides this. Indeed, the 2009 Rules again say that for members in Miss O'Riordan's situation, the Deduction is not to be taken until the member reaches SPA.
58. That leads to the next question, which is what her SPA is.
59. The Trustee says that the reference should be interpreted as being to the state pension arrangements in force at the time of the 1984 Deed – in other words, age 60. The Trustee relies on Rule 5(a) of the 1984 Rules, which refers to a member

reaching pensionable age. "Pensionable age" is defined in accordance with the Social Security Act 1975 as, for a woman, age 60.

60. That ignores the clear intention of the Rules to ensure that the deduction only applies to money payable through the state pension. The clear intention is to maintain a level pension both before and after the state pension comes into payment. Otherwise, there would be no point having this Rule at all. The language of this Rule itself does therefore suggest a contrary intention – it says the Deduction should be ignored until the member is entitled to their state pension and should then be deducted to reflect the amount of pension they will receive. Looked at in this way, the language of the Rules is clear in saying the Deduction is specifically designed to reflect the state pension a member receives. Accordingly, it should only be deducted when they receive their state pension.
61. However, Miss O’Riordan left service in 1995. She then became a deferred member and her benefits crystallised then. She was entitled to a deferred pension under Rule 15, which would be paid to her when she reaches Normal Retirement Date or pensionable age, whichever was earlier. At that point, her pensionable age was defined in Rule 5 of the 1984 Rules – in other words the pension payable from pensionable age under the Social Security Act 1975. That Act defined pensionable age for a woman as age 60.
62. So, the 1984 Rules make it clear that her pensionable age is 60 as defined by the Social Security Act 1975. It follows that at the point Miss O’Riordan left and became a deferred member in 1995 her pensionable age – both for the state pension and for the purposes of this Scheme – was 60. It was not, at that point, discriminatory to have different pension ages for men and women.
63. The effect of all of this is that, although there was an intention to ‘smooth’ pensions, this was designed to take effect from the date at which members became entitled to their state pension. Miss O’Riordan became entitled to this at age 60. Accordingly, the Trustee is correct to say that is the relevant age.

64. Miss O’Riordan says that 1998 Rules gave her existing right for the Deduction not to be applied until January 2015, and to apply part of the Deduction before that date would be in contravention of clause 4 of the 2011 Rules and would breach her subsisting right.
65. The 2011 Rules say that the relevant meaning is as originally enacted in the Pensions Act 1995. On that basis, Miss O’Riordan’s SPA would again be 60. However, those Rules were to be for clarification only and to have effect only so far as they do not adversely affect any subsisting rights. So what were her existing rights?
66. Miss O’Riordan’s existing right under the 1984 Rules was to have the state pension deduction made when she would become entitled to her state pension; which at that point would be when she reached age 60.
67. Miss O’Riordan says that when she left service in 1995 the Trustee should have been aware of the changes to the statutory SPA for women. Legislation was agreed in 1995 to gradually change the statutory SPA for women over a 10 year period starting in April 2010. However, as previously stated, when she left service the Rules applicable were the 1984 Rules.
68. The fact that the state retirement age has subsequently changed does not mean that the Rules are no longer valid. The legislation changing SPAs does not automatically extend to all references in the Scheme documents; the state pension deduction is not written in terms that require it automatically to track any later changes in the state pension.
69. Miss O’Riordan says that because she started to receive her pension before her revised SPA, the rules clearly state that the Deduction would be applied at the later date of January 2015; and the Trustee cannot recalculate the benefit and introduce a new reduction. There has been no change to her entitlement under the Rules. The position is that her SPA for the purposes of the Scheme is, and always has been, age 60. The 2011 Rules did not change this; they merely clarified what her entitlement was. The only thing that has changed is the information that has been provided to her. Up to 2011 that information was not sufficiently clear, but since 2011 the information provided has been correct.

70. I therefore find that the Trustee has dealt with Miss O’Riordan’s pension in accordance with the Rules; her pension should be reduced from the date when she would reach state pension age, as defined in the various Scheme Rules. This is the clear intention of the Rules.
71. The explanatory booklet to the Scheme refers to the Deduction taking effect from the date the member reaches SPA. The booklet states that SPA is 60 for females and 65 for males, but adds that this would be equalised at 65 for both over a 10 year period starting from 2010.
72. The only letter from the Trustee that states that the Deduction will be made from 6 January 2015 is the letter of 6 August 2002. Miss O’Riordan had already elected to take her pension from the Scheme before she received this letter. She has not said that she would not have taken her pension in 2002 had she been given the correct information at that time.
73. The Trustee is correct that misleading or inaccurate information does not in itself create a legal entitlement; a member is only entitled to the pension due to them in accordance with the rules of their scheme. But the provision of inaccurate or misleading information is maladministration.
74. There is no doubt that Miss O’Riordan was provided with incorrect information. At the time that information was given, it was accurate; the Trustee would not have known at that time of the changes subsequently introduced by the government. It was not until 2011 that the position became clear.
75. It is easy to see how Miss O’Riordan might not have been clear whether the Deduction would apply when she reached age 60 or when she actually received her state pension. The next question, therefore, is whether she acted on the information given to her detriment.
76. If Miss O’Riordan can show that she relied on the information to her detriment, she may pursue a claim in respect of any loss she has suffered as a result. The Trustee considered the points her adviser, Mr Cotter, made, but did not feel that she had demonstrated either reliance or actual financial loss.



77. While I accept that Miss O’Riordan had made certain investment decisions on the basis that her future income would remain unchanged, as the Trustee has pointed out, she has not said that she has suffered a financial loss as a result of these decisions. In fact, the changes were made to generate additional income from her investments which should help to make up some of the shortfall in her pension between her 60<sup>th</sup> birthday and 6 January 2015 when she starts to receive her state basic pension.
78. Miss O’Riordan could not have relied on the information given in the Trustee’s letter of 6 August 2002 when she bought her house two years earlier in 2000. In addition, she has not said that she had to raise a mortgage to buy her house or was finding it difficult to meet the mortgage payments. Therefore I cannot see that she had relied on the incorrect information given to her when she bought her house or that she have suffered any financial loss.
79. With regard to the purchase of a new car in 2010, Miss O’Riordan has not said that she is unable to maintain it and is having to sell it at a loss. In fact the car has possibly had a beneficial effect on her lifestyle.
80. Mr Cotter, on behalf of Miss O’Riordan, says that she is unable to make up the shortfall through re-employment as she is approaching 60 and has not worked for the last nine years. However, there is no evidence to show that she has made any attempts to seek employment and failed. Therefore, there is nothing to show that she has tried to mitigate her loss.
81. In my judgment, Miss O’Riordan has not demonstrated that she did rely on the information provided to her when deciding to retire or that she has suffered a financial loss. However, from her point of view, her income for just over two years, between August 2012 and January 2015, will be lower than she thought it would be. She has undoubtedly suffered some distress at learning that the pension she is entitled to receive in future is less than she was expecting. I shall therefore direct the Trustee to make a payment to reflect the distress caused.
82. The process of deciding on a payment for distress can never involve a simple calculation as it would for a financial loss; by its nature, it is not an exact science. I will look to take into account the particular circumstances of the individual, but will

also take a wider view and ask whether a reasonable person (with those characteristics) would have reacted in the same way. It is a matter of judgement. The individual circumstances of those making these complaints are not identical, but in each case the crux of the matter is that they were given an expectation for some time of a certain level of retirement income only to find that in fact they will be living on a lower income and will have to adjust their finances accordingly. There will be considerable distress for anyone who finds themselves in that situation.

83. The amount of such awards may range from £150 to £750 (and very occasionally more). Awards within the range of £400 to £750 might be where there are emotional issues or cumulative effects rather than a simple issue of poor customer service. In my view, this case does not fall within that bracket and the award I have made is appropriate remedy in this case.

**Directions**

84. I direct that within 28 days the Trustee make a payment to Miss O’Riordan of £300 in respect of the distress and inconvenience caused to her.

**Jane Irvine**

Deputy Pensions Ombudsman

9 February 2015