

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mrs M
Scheme	Marks & Spencer Pension Scheme (the Scheme)
Respondent(s)	Marks & Spencer Pension Trust Ltd (the Trustee)

Subject

Mrs M's complaint against the Trustee is that it provided her with incorrect information about the application of the State Pension Deduction to her pension. In addition, the Trustee has not correctly applied and misinterpreted the provisions of the rules to the Scheme.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against the Trustee because even though she was given incorrect information, apart from non-financial loss for which she has received compensation, on balance she has not suffered any financial loss. In addition, the Trustee has interpreted and applied the rules of the Scheme correctly.

DETAILED DETERMINATION

Material Facts

1. Mrs M's date of birth is 13 October 1959. She was employed by Marks and Spencer (the **Company**), but left their employment on 28 September 1996. During this time she was a member of the Scheme. Once Mrs M 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 Mrs M left employment in 1996, the Rules then in force were set out in a Trust Deed and Rules dated 28 February 1996 (**the 1996 Rules**).
3. Rule 5A of the 1996 Rules said that, subject to Rule 5E, on retirement at Normal Retirement Date, a member would be paid a pension equal to 1/45 of their final pensionable salary for each year of service.
4. Rule 5E said that a member's pension would be reduced from State Pension Age (**SPA**) by an amount equal to 1/40 of the State Pension Deduction for each complete year of pensionable service. This rule also states that the maximum reduction will be equal to the State Pension Deduction.
5. The State Pension Deduction (the **Deduction**) was defined as

“the yearly rate of the basic State pension for a single person at the date on which the Member leaves Service or dies, whichever occurs first.”
6. Under Rule 9A, a deferred member with more than two years' service was entitled to a deferred pension when they reached Normal Retirement Date. This would be calculated in the same way as if Rule 5A applied. While Rule 9B repeats Rule 5E with regard to the Deduction.
7. The Normal Retirement Date (**NRD**) under the Scheme is defined as the last day of the month in which the member's 60th birthday falls.
8. SPA is defined as age 65 for men and age 60 for women.
9. The effect of the Rules was that where a member received their pension under the Scheme before reaching 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.

10. The 1996 Rules were amended by the Deed dated 6 May 1998 (**the 1998 Rules**). Rule 16.5 of the 1998 Rules said that the benefits for members who left service before 1 January 1997 will be as described in the Rules previously in force. This rule also states that: “The benefits will, however, be paid as described in these Rules, and Rule 7.4...and 10 to 28 of these Rules will apply in place of any corresponding provisions of the previous Rules”.
11. Rule 17.1 of the 1998 Rules states that: “Pensions are payable monthly in advance on the first working day of each month, except that the Trustees may pay small pensions less frequently. No part payment will be made in respect of any part of a month, and no repayment is necessary in respect of any part of the month in which a pensioner dies”.
12. On 15 October 1996 the Trustee wrote to Mrs M informing her of the maximum pension payable to her when she reaches her NRD. The letter stated that the figure quoted took into account the deduction made when she reaches SPA. Her NRD and her state retirement date were shown as 31 October 2019 and 13 October 2019, respectively.
13. On 6 March 2006 the Trustee wrote to Mrs M informing her of the estimated pension payable from age 60. The letter stated that the estimated figure would reduce by the state pension deduction on 1 November 2024 and the current figure for the deduction was £1,678.00.
14. In January, February and August 2009 the Trustee wrote to Mrs M giving her estimates of her pension payable on a number of different dates. All these letters state that the pension would be reduced at SPA, but do not state what this age was.
15. On 9 October 2009 the Trustee wrote Mrs M informing her of the pension she would receive from 1 November 2009. It added that the pension would reduce when she reaches SPA, on the first payment date after 1 November 2024.
16. On 10 August 2011 the Trustee wrote to Mrs M stating that when she retired she was advised that her pension would be reduced by £1,937 from 13 October 2024. 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 part of the Deduction should be applied when she reached age 60 and not 13 October 2024 as previously advised. The letter offered an apology for having provided incorrect information regarding the timing of the Deduction.

17. Mrs M complained to the Trustee saying that she was always aware that her pension would reduce when she started to receive her state pension. She fully understood that the Government changed her state retirement age from 65 to 66 years and 5 months, and that the Scheme would still reduce her pension at age 65 as she had been advised when she started to take her pension. However, she did not understand why the Deduction was being made at age 60 if there has not been a change to the Scheme. She always understood that there could not be retrospective changes to the Scheme once the pension was being drawn. She had based her decision to take pension on the information she was given at the time. If the information was incorrect, it was not her fault.
18. By a Deed dated 20 September 2011 (**the 2011 Rules**), the Trustee modified the 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 60th birthday, and for a man, his 65th 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 60th birthday and for a man his 65th birthday

for service after 17 May 1990, the meaning given in the Pensions Act 1995 as originally enacted; being for a man, his 65th birthday and for a woman, an age between her 60th and 65th 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.

19. 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.
20. The explanatory booklet for the Scheme dated April 1997 (the **1997 Booklet**) states, in the “Introduction” section that the terms and conditions are contained in the Rules, which is the legal basis of the Scheme and which will prevail in any dispute. Under the section “Retiring Early” it states: ‘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. In addition it says that if a member decides to retire before SPA, the Scheme will ‘bridge’ the gap by paying the pension, without any deduction for the Basic State Pension, until the member reaches SPA.
21. The Trustee wrote to Mrs M on 19 August 2011 saying that changes were made by the Government in 1995 to the female SPA which changed hers to 65. As the Scheme operated a state pension deduction these led to a review of the Rules to clarify the date when the deduction is made. As a result, it was discovered that part of the deduction (for her pre-17 May 1990 service) should be made at the SPA of 60 which applied when she left service. This means that there will be a gap of five years between the date the deduction is made and when she receives her state pension. However, the Company is committed to paying pensions in line with the Rules and cannot be responsible for covering any gap in pension payments. Its responsibility is to administer the Scheme in line with the Rules and it has always been the case under the Scheme that a deduction is applied at a specific age (between 60 and 65 – depending on when the member is born and when they joined and left the Scheme) and this will continue to be the case. She was informed that the reductions would be £1,220 and £749.00 applied as from 1 November 2019 and 1 November 2014 (the latter dated should have been 2024 and not 2014).

22. Mrs M continued to complain and the Trustee wrote to her apologising for the error made when she retired in 2009. It appreciated that the correspondence mentioned that the Deduction would be made in 2024. However, since then it had reviewed the Rules and discovered that as she left in 1996, part of the Deduction should in fact be made when she reaches age 60 and not 65. An apology was also given for having given her incorrect information over the telephone on 16 August 2011. It confirmed that the Deductions in her case would be made on 1 November 2019 and 1 November 2024.
23. Mrs M continued with her complaint and on 26 October 2011 the Trustee requested further information from her about whether she had relied on the information she received and the actual financial loss she has suffered. It asked for details of specific financial transactions she had entered into at the time of or in anticipation of when she intended to take her pension from the Scheme.
24. Mrs M took her complaint to the Pensions Advisory Service (**TPAS**). On 27 February 2014, TPAS on behalf of Mrs M made a complaint under the Scheme's internal dispute resolution procedures (**IDRP**).
25. The Trustee wrote to TPAS on 13 March 2014 requesting further information from Mrs M about whether she had relied on the information she received and the actual financial loss she has suffered. It asked for details of specific financial transactions she had entered into at the time of or in anticipation of when she intended to take her pension from the Scheme.
26. In her response to TPAS, which was passed on to the Trustee, Mrs M says:
 - She deliberated carefully before deciding when to take her pension. Her requirement was a degree of personal financial independence from her husband, particularly once they had both retired. For her husband this could not be before he was 55, so she could have waited and not taken her pension until age 55. The evidence of her deliberation is that she requested pension forecasts in January, February, April and August 2009 to consider all possible options.
 - At the time, the forecasts for taking a pension at age 50 was £7,613 per annum and at age 55 it was £9,854 per annum. The forecasts stated that the Deduction would be made at SPA, but a date was not stated. However, she relied upon a letter in 2006 which said that the Deduction

for her would start on 1 November 2024. She also relied upon verbal confirmation from the Company's pension department at the time of requesting the forecasts that the SPA for her was 65. She would not have taken her pension at age 50 had she known that the Deduction would be applied in 2019, at age 60, rather than in 2024.

- The annual income of £7,613 would be sufficient for her personal needs, but if she had known that she was losing nearly £2,000 per annum at age 60 for five years she would have opted to take her pension at age 55. This would have given her an annual income of £9,854, around £2,000 a year more.
- Her loss is approximately £2,000 a year for five years, which totals nearly £10,000.

27. On 15 April 2014 the Trustee wrote to TPAS confirming that Mrs M was receiving the correct entitlement under the Rules. The Trustee said that it accepted that the provision of incorrect information regarding the Deduction amounted to maladministration and was therefore prepared to offer her £500 compensation in recognition of this. With regard to her decision to retire at age 50, which she says was in reliance on the expectation of a specific level of income until her statutory SPA, it considered the matter carefully but on balance did not accept that her decision was closely linked to the information about the Deduction. A decision to retire early is generally a complex one and not linked solely to expected income (eg there may be lifestyle factors in play). It is unlikely that in making her decision she was looking forward 10 years, let alone 15 years. In addition, the deduction is approximately 15% of the total pension, to be applied 10 years after her decision. Even if she did rely on the information given, there is no evidence of actual financial loss. It recognises that her expectations will not be met, and that she may as a result of the correction of the position need to adjust her lifestyle. She has not provided any evidence to suggest that her income would be higher if she had not chosen to receive a pension or that she has entered into financial commitments which she cannot now meet.

28. Mrs M accepted the compensation of £500 offered by the Trustees and payment has been made to her. She says that she accepted the compensation for maladministration only, on the written understanding, from both TPAS and the Trustee, that she would continue to contest the Trustee's interpretation of the Rules and that the compensation would not prejudice her case.

Summary of Mrs M's position

29. Rule 16.2 of the deed dated 6 May 1998 (the **1998 Rules**) is headed "Members who joined the Scheme before 1st January 1996" and this rule specifically states that the application of the state pension deduction will only be applied from the date the member reaches SPA. SPA is defined in Rule 1 of the 1998 Rules as having a meaning as set out in the Pensions Act 1995 which for women born after 6 April 1995 is age 65.
30. She refers to Rule 16.5 of the 1998 Rules and says that her argument is that the date from which the Deduction is applied, forms part of the payment of the benefit and not its calculation.
31. It is illogical to include a rule stating it is applicable to members who joined before 1 January 1996 and then argue that because the deed was completed in 1998 the rule does not apply to someone who was an active member of the Scheme as at 1 January 1996.
32. If there is any ambiguity caused by the effect of differing rules then the rules should be interpreted in favour of the reader and not the party who was responsible for the document, which in this case are the Trustee and the Company.
33. If it is considered that the 1998 Rules only apply to her in relation to the payment of benefits, then the date from which the state pension is applied relates to the payment of those benefits and therefore the Deduction should only be made as from the date set out in the 1998 Deed, ie her SPA should be age 65.
34. She is not entitled to her state pension from the age of 60. SPA changes were announced in 1995, before she left the Company, and therefore it was already known she could not receive her state pension before age 65.

35. It is clear that the Rules were amended in 2011 to comply with the equalisation requirements of the “Barber” judgment. She believes that it is generally accepted that where a scheme change has not been previously communicated to members it cannot be made retrospective.
36. While she does not disagree that her revised SPA is 65 or that she has pensionable service both before and after 17 May 1990, she does not agree that any part of the Deduction should be applied to her before she reaches age 65. She also believes that her case should be considered on its own merits.
37. She believes that, in her case, the Trustee has retrospectively and incorrectly interpreted the Rules. She believes that she was originally correctly informed by the Trustee that the Deduction would take place from age 65.
38. The Trustee has ignored her claim that she has a subsisting right to the Deduction only being applied from age 65 and that the 2011 Rules did not allow the Trustee to adversely affect that subsisting right.
39. Due to the legislation effective from 6 April 2010, if she had not taken her pension at age 50, she would have been unable to take it until age 55 and therefore she had to consider her options carefully and made decisions based on the information provided to her.
40. Although the letters she received from the Trustee in 2009 did not state what her SPA was, she had no reason to think that it would have changed from age 65 as indicated in the letter of 6 March 2006 and the April 1997 booklet.
41. She relied on the letter sent by the Trustee in January 2009 to deferred members stating that any changes to the Scheme would not affect them.
42. She would have taken her pension 5 years later if she had known that the Deduction would be applied for her from age 60. She had calculated that the pension she would receive at age 50 would give her independence from household income which she required. Waiting to take her pension at age 55 would have increased her pension to an amount which would have covered the loss of income which she has suffered. It is impossible to show that there would be an actual financial loss before October 2019 as no part of the Deduction would be applied until that date.

43. Because of the legislative changes in April 2010, she either took her pension at 50 or had to wait until 55. This meant that she could not change her decision for five years. She decided on balance to take the pension in October 2009 because of adverse media coverage at the time, and in the preceding years, of high profile pension funds running deficits. She believed that whilst her pension was still deferred, the discounting rules could be amended meaning that she could take her pension later and end up getting less than if she had taken it earlier.
44. Had she thought that the Deduction would be applied at 60 reducing her pension by approximately £2,000 a year for five years, she would not have taken it at 50 but would have waited until 55. She would have decided on balance that the risk of the discounting rules being amended was worth taking because she could have counteracted these by not taking her pension until age 60 if necessary.
45. She had calculated, based on quotations she received in 2009, the total amounts of pension she would have received had she retired at age 50 and 55. Her calculations were based on a life expectancy of 80, no increases in her pension and assuming that the deduction at age 60 will be £1,848. The difference in the total amounts at 55 as compared to 50 is a loss of £23,930. Her calculations are as follows:
- “**A)** Taking Pension at 50: (Pension of £7414 x 10 yrs) + (Reduced Pension of £5566 x 20 yrs) = Total pay out of £185460
B) Taking Pension at 55: (Pension of £9854 x 10 yrs) + (Reduced Pension of £8006 x 20 yrs) = Total pay-out of £209390”
46. Her situation is that she is currently part of a household. Her existing financial commitments are not those that she will have in five years' time, but if they were it would be impossible for her to meet them. She does not know what her situation may be in five years' time, but it is clear that, if the Trustee is allowed to make part of the deduction from age 60, she will suffer significant financial loss for five years and a loss of independence.

Summary of the Trustee's position

47. Mrs M left service on 28 September 1996 and her entitlement is governed by the Rules in force at the date she left service unless and to the extent they were subsequently amended. The relevant primary Trust Deed is dated 7 August 1984. This was subsequently amended by a Supplemental Deed dated 25 November

1988, although it did not make any changes relevant to her. A further amendment to the Rules was made by the Deed dated 28 February 1996.

48. The Rules in force at the time she left service provide that the Deduction should be applied at “State Pension Age”, which is defined as age 60 for women (Rule 9B of the 1996 Rules).
49. The 1998 Rules do not apply to the calculation of Mrs M’s benefits. Her benefits are calculated in accordance with the Rules in force when she left service and are only “paid” in accordance with the 1998 Rules.
50. The 1984 Deed does contain provisions by virtue of which references to legislation are deemed to be references to modifications and re-enactments. However, there is no statutory reference included in the definition of “State Pensionable Age”.
51. Its position is that the Deduction should be applied at the age which is her SPA for the purposes of the Rules. In respect of pension attributable to pensionable service before 17 May 1990, this is age 60; and in respect of pension attributable to pensionable service on or after this date this is age 65.
52. It acknowledges that she was provided with letters dated 6 March 2006 and 9 October 2009, and several early retirement quotations, which stated that the Deduction would be applied from 13 October 2024.
53. It is well established that the provision of incorrect, incomplete or misleading information does not in itself give rise to any entitlement in excess of that which applies under the Rules. All the documents sent to her are summary documents and not documents which could reasonably be expected to confer any such entitlement.
54. It has no powers to confer benefits in excess of those under the Rules. The Company did have such power, 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.
55. Mrs M says that she retired early at age 50 in reliance on the expectation of a specific level of income until her statutory SPA (ie age 65). She claims she would not have taken her pension until five years later if she had known the Deduction

would apply at age 60, and would have saved the additional income. She cites as evidence her request for pension forecasts in 2009 to consider possible options. However, she did not provide any evidence of actual financial loss suffered. The pension she received from age 50 will be actuarially equivalent to that which would have been payable at a later date, so there is no loss caused as a result of taking the pension early. Furthermore, she does not suggest at any point that having a lower income means that she cannot meet her existing financial commitments.

Conclusions

56. 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.
57. 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.
58. 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.
59. 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.
60. For members who left service before 17 May 1990, the Scheme applies the state pension deduction at age 60 for women and 65 for men.

61. 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).
62. 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 Mrs M now has a SPA of 65 and will receive her basic state pension on October 2024, but she continues to have a SPA under the Rules of 60 for pre-May 1990 pensionable service. The result of this is that her state pension deduction for this period will be taken in 2019 when she reaches 60. So there will be a gap of five years when her Scheme pension will be reduced but she will not yet be receiving her basic state pension.
63. Mrs M 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.
64. It follows from my conclusion in Mrs Thew's complaint that Mrs M has not suffered unlawful sex discrimination, but there remains the question of whether her pension has been dealt with in accordance with the Rules.
65. This question turns on the definition of SPA and, thus, the date at which the Deduction should be applied. Mrs M 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.
66. In the 1996 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 5E states that the member's pension will be reduced from SPA.

67. 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 Mrs M's situation, the Deduction is not to be taken until the member reaches SPA.
68. That leads to the next question, which is what her SPA is.
69. The Trustee says that the reference should be interpreted as being to the state pension arrangements in force at the time of the 1996 Rules – in other words, age 60. The Trustee relies on Rule 9B of the 1996 Rules, which refers to the reduction in respect of the Deduction being applied from SPA, defined in the 1996 Rules as age 60 for a woman.
70. 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.
71. However, Mrs M left service in 1996. She then became a deferred member and her benefits crystallised then. She was entitled to a deferred pension under Rule 9A, which would be paid to her when she reaches NRD.
72. The 1996 Rules make it clear that both her NRD and SPA is 60. It follows that at the point Mrs M left and became a deferred member in 1996 her pensionable age – both for the state pension and for the purposes of this Scheme – was 60.
73. 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. Mrs M became entitled to this at age 60. Accordingly, the Trustee is correct to say that is the relevant age.

74. Mrs M says that the 1998 Rules apply to her and refers to Rule 16.2 headed “Members who joined the Scheme before 1st January 1996”. Rule 16.5 states that for member who left service, or reached NRD, before 1 January 1997 the Rules in force previously, and not the 1998 Rules, apply. As she left service in 1996, the 1998 Rules clearly do not apply to her.
75. Mrs M says that Rule 16.5 of the 1998 Rules states that benefits are paid in accordance with those Rules, and her argument is that the Deduction forms part of the payment of the benefit. While I can see how she may have come to this view, in my view, the Deduction is not a payment but a factor that is taken into account in calculating the member’s pension after SPA. The payment of pensions is covered under Rule 17.1 of the 1998 Rules.
76. Mrs M says that 1998 Rules gave her existing right for the state pension deduction not to be applied until October 2024, 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.
77. The 2011 Rules say that the relevant meaning is as originally enacted in the Pensions Act 1995. On that basis, Mrs M’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?
78. Mrs M’s existing right under the 1996 Rules was to have the Deduction made when she would become entitled to her state pension; which at that point would be when she reached age 60.
79. Mrs M says that when she left service in 1996 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 1996 Rules. While I agree that at the time she left service it was known that there would be changes to the statutory SPA for women, it does mean that the 1996 Rules do not apply to her.
80. 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.

81. There has been no change to Mrs M's 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.
82. I therefore find that the Trustee has dealt with Mrs M's pension in accordance with the Rules; her pension should be reduced from the date when she would reach SPA, as defined in the various Scheme Rules. This is the clear intention of the Rules.
83. The 1997 Booklet does say that SPA would be equalised at 65 for both males and females over a 10 year period starting from 2010. However, this booklet was issued after Mrs M had left the service of the Company. In addition, this booklet is over-ridden by the Rules; in her case the 1996 Rules.
84. 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.
85. There is no doubt that the information provided to Mrs M has been incomplete. References were made to the deduction being taken from her pension when she reaches SPA, with little explanation of what that term meant. She was initially told that would be in October 2019 and on other occasions that it would be in October 2024. It was only in 2011 that the correct position was explained. Mrs M could have worked her way through the various Scheme Rules to try to work out for herself what that meant for her. Bearing in mind, however, that the Scheme Rules had been changed over the years, it would be unreasonable to expect her to have done that. I would not have expected her to waded through trust deeds and legal jargon to try to understand what it all meant. I have no doubt that she took the term SPA to mean the age at which she would receive her state pension. In the absence of adequate definition or explanation that

would be a reasonable approach for her to take. 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.

86. Taken together, the information provided was inconsistent and unclear. It is easy to see how Mrs M might not have been clear whether the Deduction would apply when she reached age 60 or when she actually received her state pension.
87. The next question, therefore, is whether she acted on the information given to her detriment.
88. The Trustee concluded that Mrs M has not provided any evidence to show that she has suffered actual financial loss. It says that the pension paid to her at age 50 is the actuarial equivalent of the pension that would have been payable at a later date. Therefore, it dismissed her claim that she would have retired at a later date had she known that the Deduction would have been applied from age 60.
89. Mrs M was given incorrect figures on two occasions, in March 2006 and October 2009, before she decided to retire. While I accept that she believed the information given to her to be correct in deciding to take her benefits at age 50, I am unable to find that, on the balance of probabilities, she would have deferred taking her pension at age 55 had she been given the correct information in the first place. As Mrs M has stated, if she did not take her pension in October 2009, when she was 50, because of the change in the legislation in April 2010 she would have had to wait until she was 55 to take it. Clearly, she needed an income when she took her pension from the Scheme at the age of 50. She has not said where this income would come from had she not taken her pension then.
90. Mrs M has said that by deferring her pension, her pension at age 55 would be higher and the increase in pension would cover the loss of income she would suffer as a result of the Deduction being made when she reaches age 60. She has calculated her loss to be £23,930. I agree that her pension at age 55 would have been higher than her pension she is receiving, but as she had taken her pension at age 50 she has received five more years of pension. The loss she has calculated does not take into account post-retirement increases on her pension; it also assumes that the whole of the Deduction is made at age 60, which is incorrect as only a part, albeit the larger part, is deducted at age 60 and the remainder at 65;

and it assumes that she will live at least until age 80. I do not disagree that should she live until age 80, the total amount of pension she could receive would be higher if she had taken her pension from age 55 instead of age 50. However, it does not mean that the actuarial value of her pension taken from age 50 is lower than the value of her pension had she deferred taking it until age 55.

91. Applying the basis Mrs M has used to calculate the loss she says she would suffer if she survived until age 80, I have calculated that it will be approximately another 15 years before the total amount of her pension taken from age 55 exceeds the pension taken from age 50. Therefore, at this point in time, I am unable to find that she has suffered a loss. My calculations are as follows:

- total pension pay out if taken at age 50: $(£7,414 \times 10) + (£5,566 \times 10.19)$
= £130,857.54;
- total pension pay out if taken at age 55: $(£9,854 \times 5) + (£8,006 \times 10.19) =$
£130,857.14..

92. Mrs M was given misleading information and has undoubtedly suffered considerable distress at learning that the pension she is entitled to receive will be less than the pension she expected. The Trustees have offered her compensation of £500, which she has accepted. I therefore do not need to consider this matter further.

Jane Irvine
Deputy Pensions Ombudsman

10 February 2015