

Ombudsman's Determination

Applicant	Mrs Valerie Haskey
Scheme	Marks & Spencer Pension Scheme (the Scheme)
Respondent(s)	Marks and Spencer Pension Trust Limited (the Trustee)

Complaint summary

Mrs Haskey has complained that the Trustee has incorrectly applied the basic state pension deduction to her pension benefits from June 2014.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the Trustee because there has been no maladministration. The Trustee has dealt with Mrs Haskey's pension in accordance with the Scheme rules, which states that her state pension age is her 60th birthday. However, the Trustee did provide her with inaccurate or misleading information and she has suffered non-financial injustice as a result.

DETAILED DETERMINATION

Material Facts

1. Mrs Haskey's date of birth is 21 May 1954. She was employed by Marks and Spencer (the **Company**), but left their employment on 31 March 1992. During this time she was a member of the Scheme. Once Mrs Haskey 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 Haskey left employment in 1992, 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 1/40th 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. Mrs Haskey was sent a certificate on 15 June 1992 from the Trustee setting out her entitlement on leaving the Scheme. The certificate stated that her normal retirement date is 31 May 2014 and her state retirement date is 21 May 2014. The certificate informed her that when she reached normal retirement date she would be entitled to a pension of £54,312.52, which "takes into account the deduction to be made when you reach state retirement age". The certificate was accompanied by a "Notes on Preserved Pensions" which states in paragraph 4 under the heading "Preserved Pensions":

"The Marks and Spencer Pension Scheme is designed to allow for the Basic State Pension earned by the member during membership of the scheme. All staff have a Normal Retirement Age of 60, although men are not entitled to claim the Basic State Pension until they reach 65. If you are a man your certificate will show your entitlement at age 60 and the adjustment at 65"
12. In a letter dated 10 November 2009, the Trustee gave Mrs Haskey's details of her estimated pension which were a full pension of £34,814 payable from 31 May 2014 or a reduced pension of £22,381 plus a lump sum of £149,202. The letter advised that the pension would be reduced when she reached SPA; the amount of the

reduction was currently £2,047.52, but would increase in line with the increases applied to the pension. The letter did not say what her SPA was.

13. In another letter dated 25 November 2009 the Trustee informed Mrs Haskey that a full annual pension of £25,928 was payable from 31 May 2010. It added that the pension will reduce by £2,054.18 when she reached SPA. Once again, the letter did not state what her SPA was.
14. On 12 May 2010 the Trustee wrote to Mrs Haskey informing her that she would receive a pension of £26,544 as from 1 June 2010. It added that her pension would reduce when she reached SPA, on the first payment after 1 August 2018.
15. On 10 August 2011 the Trustee wrote to Mrs Haskey stating that when she retired she was advised that her pension would reduce by £2,099 from 6 July 2018. The Trustee added that as a result of the Government's proposal to change SPA, it had recently reviewed how the state pension deduction is applied to her pension. The result of the review was that that part of the deduction (which relates to the part of her pension that was earned before 17 May 1990) should be applied when she reached age 60 and not 6 July 2018 as previously advised. The letter offered an apology for having provided incorrect information regarding the timing of the deduction.
16. 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 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.
17. 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.
18. The explanatory booklet for the Scheme dated April 1997 states, under the section headed “Retiring Early”: ‘Your retirement income will be worked out on your salary and service when you retire. Remember there will be no deduction for the State Basic Pension until you reach State Pension Age’.
19. Mrs Haskey complained to the Trustee. She said:
- She had been informed as to how the state pension deduction was to be applied, but it failed to inform her of the rules of the Scheme that allowed it to reduce her pension earlier than she had been advised.
 - She had been sent a copy of the “Notes on Preserved Pensions” in March 1992 when she left the service of the Company. Under the heading “Preserved Pension” in paragraph 4, it states that men are not allowed to claim the basic state pension until they reach 65. She knows that this is still the case because her husband is in receipt of a pension from the Scheme which will reduce when he receives his state pension at age 65. From this she can only deduce that the Trustee’s proposed action on her pension payment is discriminatory.
 - She finds it totally unacceptable that the Trustee had not identified the need for the change sooner. She has now been in receipt of her pension from the

Scheme since 1 June 2010 and was advised by the Government of the change in her SPA some considerable time ago.

20. The Trustee wrote to Mrs Haskey on 22 August 2011 saying that changes were made by the Government in 1995 to the female SPA. 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. Following a judgment in the European Court, only that part of her deduction accrued after 17 May 1990 had to be made at the SPA as defined by the Pensions Act 1995 with the remainder being applied at age 60. 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. For her information, her pension is scheduled to reduce by £2,447 on 1 June 2014 and by a further £260 on 1 August 2018.
21. Mrs Haskey continued with her complaint against the Trustee and eventually took her complaint to the Pensions Advisory Service (**TPAS**). On 27 February 2014, TPAS on behalf of Mrs Haskey made a complaint under the Scheme's internal dispute resolution procedures (**IDRP**).
22. The Trustee wrote to TPAS on 13 March 2014 requested further information from Mrs Haskey 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.
23. In her response to TPAS, which was passed on to the Trustee, Mrs Haskey says:
 - She worked for the Company for 20 years, in relative senior positions and trusted them to provide her with correct information which she could rely on.
 - She trusted the Company with her pension fund.

- She had no reason to question the information that she was given as it met her expectations. She also refers to the “Notes on Preserved Pensions” about when men can claim their state pension and what was shown on the certificate for them.
- She was paid what the Trustee contracted to pay her since 2010. It was only in 2011 that they advised her that they intended on reducing her pension in payment. Why would she ever suspect that the Trustee would renege on the contract that she had been given?
- The letter that she received from the Trustee said that it had recently reviewed how the state pension deduction is applied to her pension. The Government had in fact changed her SPA in 1995, so why was the Trustee reviewing its actions in 2011, some 16 years later.
- In February 2012, she and her husband decided to sell their second car in order to reduce their outgoings. Had she been informed in 2010 that her pension would be reduced earlier than she was told, they would have sold the car earlier.
- Between June 2010, when she took her pension, and August 2011, when the Trustee informed her of the changes, they spent €7,750 renovating their property which they would not have undertaken had they been given the information at the time. They also spent €750 replacing their age computer.
- When they arrived in France they purchased a second car which was two years old. The car is now nine years old and will need replacing during the period that the Trustee is proposing to reduce her pension.
- In 2010/11 they took holidays for the first time since arriving in France in March 2007.
- She took her pension early for the very simple reason that they lived in Europe and have to convert their income to euros. Sterling has fallen against the euros over the years and this means that they were losing 30% of their income which is unsustainable. They had to release some capital by moving home, but it became evident that when sterling failed to recover she would

need to take her pension early than anticipated. Having received the pension illustrations she decided that she needed to maximise her annual pension and as a consequence did not take a capital sum. Had she been provide with different information she may well have taken a small capital sum to invest and used to equalise her annual pension payments or delayed taking her pension.

- Her loss is simple, the Trustee is proposing to reduce her pension by £2,447, which is in the region of 10% reduction in her income. Had she taken a capital sum it would have been an even greater percentage.
- Had she taken a small capital sum for example £10,000 and invested it in the Company's shares purchased on 1 June 2010 and selling it on 1 March 2014, she would have a capital of £14,000 to cover her for the period the Trustee is proposing to reduce her pension. It is very difficult to establish an actual loss because no one knows what would have happened.

24. On 15 April 2014 the Trustee wrote to TPAS confirming that Mrs Haskey was receiving the correct entitlement under the Rules. The Trustee said that it accepted that the provision of incorrect information regarding the state pension deduction amounted to maladministration and was therefore prepared to offer her £500 compensation in recognition of this. It acknowledged that she had been provided with incorrect information and this was misleading. However, this did not of itself create an entitlement to this benefit. Action taken in reliance on incorrect, incomplete or misleading information can result in actual financial loss for which the Scheme would be obliged to compensate a member. In response to her comments about reliance and financial loss, the Trustee responded as follows:

- She says that she may have deferred retirement. However, given her other comments about exchange rate movements and the need to crystallise her pension in light of this, it seems unlikely that she would in fact have deferred retirement if she had known the correct position. In any event, the actuarial factors used should mean that the pension at a later age would have been actuarially equivalent.

- She says that she would have taken a retirement lump sum and invested it, she suggests in the Company's shares. However, the commutation factors in use by the Scheme suggest that the total value of her pension will be at least equal to the lump sum she could have chosen to receive; and it is not sufficient to suggest with hindsight how she might have invested any lump sum. It would need to see some behaviour evidencing what she might actually have done.
- She says that she has carried out refurbishments on her home. Even if there is a causal link between her expected income such that this amounts to reliance, it would expect that she will have retained the benefit of these improvements through increased value of her home.
- There is no evidence that the timing of the sale of her car was impacted by her expectations as to the level of pension or that she would not otherwise have bought a new car.
- With regards to holidays, it is not seeking any repayment of past payment and so even if there is a causal link between her expected income such that this amounts to reliance, there is no evidence of actual financial loss.

Summary of Mrs Haskey's position

25. 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. 64 years and two months, as originally envisaged by the Pensions Act 1995.
26. 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*".

27. 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.
28. The letter dated 12 May 2010 confirmed the benefits payable to her from 1 June 2010 and that the state pension deduction would be applied from 1 August 2018 which was her revised SPA under the Pension Act 1995 and the 1998 Rules.
29. With regard to the letter of 10 August 2011 it is clear that prior to the review referred to in that letter the Trustee believed that the deduction would only apply from her revised SPA.
30. Since the 1998 Rules there have been several deeds completed but the only deed which specifically affects the date from which the state pension 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 state pension deduction would be applied in part from age 60 (in 2014). She believes that the terms of the 1998 Rules gave her a subsisting right for the state pension deduction not to be applied until her revised SPA of 1 August 2018, and to apply part of that deduction before that date would be in contravention of clause 4 of the 2011 Deed and would breach her subsisting right.
31. Notwithstanding the fact that her complaint has not yet been resolved, the Trustee has applied a deduction of £2,175 a year to her pension as from 1 June 2014, which she believes is in contravention of the provisions of the Trust Deed and Rules applicable to her.
32. She would also like to complain that the Scheme has now been rendered unequal. This is because a male member of the Management staff receives a bridging pension from the date of their retirement from the company, ie 60, until they are in receipt of their state pension at the age of 65. This change was introduced into the Trust Deed and Rules in March 1977 and can be clearly seen when reading the definitions in the Trust Deed and Rules dated 1971 and 1977 (the **1971 and 1977 Deeds**).

33. The 1971 Deed defines 'Normal Pension Date' as: "...the date on which the Member is normally entitled to retire and receive his pension benefits under the Plan which is the 65th birthday in the case of a male Employee and the 60th birthday in the case of a female Employee".
34. The 1977 Deed defines 'Normal Retirement Date' as: "...any male Member who is not on the Company's register of management staff the last day of the month in which the 65th anniversary of his birth occurs and in relation to any other Member the last day of the month in which the 60th anniversary of his birth occurs".
35. The element of bridging was introduced following the reduction in retirement age for male members of management from 65 years of age to 60 years of age bringing them in line with the retirement age of female members of management staff. The bridging pension allowed men and women in management categories to enjoy the same overall pension package.
36. Due to the changes made to the State Scheme this is no longer the position. The changes adopted under the 1998 Rules effectively corrected this so that the combined pension between age 60 and SPA was the same, but the later deeds reversed that position.
37. The Trustee sought advice from a leading QC in 2011 to ascertain the effect of the changes to the statutory SPA on the Scheme SPA. However, the Trustee had already determined this. The SPA for women was changed in the Pensions Act 1995 and the Trustee reflected this in the 1998 Rules. Her pension was calculated and paid based on the 1998 Rules which were in force at the time she requested her pension.
38. The Trustee used the Barber judgment¹ as the basis for the change to the 2011 Rules. The judgment was made in 1990 and did not affect the 1998 Rules. 21 years after the judgment the Trustee has retrospectively changed the rules to the Scheme. The 1998 Rules were perfectly clear and gave her a SPA of 64 years and two months and stated that no state pension deduction would be made until she was in receipt of her state pension.

¹Barber v Guardian Royal Exchange Assurance Group [1991] 2 All ER 660

39. Her new SPA is 6 January 2020 when she will be close to 66 years of age.

Summary of the Trustee's position

40. The state pension deduction should be applied from the date which is Mrs Haskey's SPA for the purposes of the Scheme Rules. 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.
41. Mrs Haskey left service on 31 March 1992 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.
42. 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.
43. 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 to state pension age 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.

44. The Trustee and the Company entered into a Deed confirming this position in 2011.
45. As stated above, Mrs Haskey's benefits are governed by the 1984 and 1988 Rules. Rule 5(a) of the 1984 Rules provides that the state pension deduction should be applied at pensionable age. This is to be read by reference to the Social Security Pensions Act 1975. Mrs Haskey's "pensionable age" is, therefore, 60.
46. The 1984 Rules do contain provisions by virtue of which references to legislation are deemed to be references to modifications and re-enactments (Rule 1(ii)). However, there is no statutory reference included in the reference to "pensionable age" and so this does not apply here.

Part of Mrs Haskey's pension is attributable to pensionable service on or after 17 May 1990 and therefore that part of her pension must be considered against the background of the equalisation requirements in the Pensions Act 1995. The state pension deduction in respect of that period of pensionable service is applied at the date which will be applied at her state pensionable age under that Act, which was age 64 and two months.

47. The Trustee acknowledges that Mrs Haskey had been provided with correspondence which stated that the state pension deduction would be applied from 2018. 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; the Trustee 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.
48. In some cases, a member may be able to show that they acted on the information to their detriment and the Trustee may then be liable to compensate them for any loss they incur as a result of relying on that information, provided they can show it was reasonable for them to have relied on it.
49. As part of IDRP, Mrs Haskey was invited to provide evidence to support her claim that she acted in reliance upon the information provided. Her claims were considered by the Trustee and it gave its response to TPAS on 15 April 2014.

50. Mrs Haskey has complained that the Scheme has been made unequal as between men and women who were management staff of the Company. It has taken legal advice on the requirements to equalise treatment of men and women, including the requirement of the Pensions Act 1995 and those resulting from the Barber case, and has been advised that the Scheme complies with the law in this regard.
51. The case of *Birds Eye Walls v Roberts*² confirms that different treatment of men and women is permissible and lawful where it is intended to address differences arising from inequity in the state system. Different treatment of men and women in accordance with this aim is allowed, regardless of whether that purpose is fully achieved. The case confirms that it is not discriminatory practice where the different treatment is “intended to compensate, in particular, for loss of income resulting from the fact that they have not yet reached the age required for the payment of State pension”. The judgement does not say that a bridging pension must fully compensate the member for the fact that he is not receiving a state pension.
52. Although men and women are treated differently under the Scheme, this arises from the discriminatory nature of the state pension system. The changes in legislation to gradually increase state pension age exacerbate the difference between men and women in some cases, but this does not undermine the purpose of the state pension deduction. The intention in applying the state pension deduction has been to attempt to address the inequalities arising from the different treatment of men and women under the state pension scheme and the Rules were designed in order to address that inequality. These are the same issues as were considered by the Deputy Pension Ombudsman in more detail in the determination for Mrs Thew.

Conclusions

53. 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.
54. 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

² *Birds Eye Walls Limited v Roberts* [1993] EHECJ C-132/92

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.

55. 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.
56. 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.
57. 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.
58. 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).
59. 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 Haskey now has a SPA of 65 years and seven months and will receive her basic state pension on January 2020, but she continues to have a SPA under the Rules of 60. The result of this is that her state pension deduction for this period will be taken in 2014 when she reaches 60. So there will be a gap of over five years when her Scheme pension will be reduced but she will not yet be receiving her basic state pension.
60. Mrs Haskey has alleged that she is the victim of unlawful discrimination. 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.

61. It follows from my conclusion in Mrs Thew's complaint that Mrs Haskey has not suffered unlawful sex discrimination. There now remains the question of whether her pension has been dealt with in accordance with the Rules.
62. This question turns on the definition of SPA and, thus, the date at which the state pension deduction should be applied. Mrs Haskey 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.
63. 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".
64. 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 Haskey's situation, the deduction is not to be taken until the member reaches SPA.
65. That leads to the next question, which is what her SPA is.
66. 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.

67. 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.
68. Mrs Haskey says that the rules that apply to her should be the 1998 Rules because those were the rules that applied when she decided to take her pension from the Scheme. Mrs Haskey left service in 1992 and therefore the rules applicable are those that applied at that time and not in 2010.
69. When she left service she 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 reached 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.
70. So, the 1984 Rules make it clear that her pensionable age is 60 as defined by the Social Security Act 1975. It follows that the point Mrs Haskey left and became a deferred member in 1989 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.
71. 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 Haskey became entitled to this at age 60. Accordingly, the Trustee is correct to say that is the relevant age.

72. Mrs Haskey says that 1998 Rules gave her existing right for the state pension deduction not to be applied until August 2018, 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.
73. The 2011 Rules say that the relevant meaning is as originally enacted in the Pensions Act 1995. On that basis, Mrs Haskey'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?
74. Mrs Haskey'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.
75. 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.
76. The complaint as put to me by Mrs Haskey is that the rules applicable to her are the 1998 Rules and the Trustee used the Barber judgment as a basis for the change in the 2011 Rules. There has not been a 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.
77. I therefore find that the Trustee has dealt with Mrs Haskey'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.

78. The explanatory booklet to the Scheme refers to state pension deduction taking effect from the date the member reaches SPA.
79. 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.
80. There is no doubt that the information provided to Mrs Haskey was incomplete. References were made in correspondence in 2009 to the deduction being taken from her pension when she reaches SPA, with little explanation of what that term meant. She was initially told May 2010 that the deduction would be made in August 2018. It was only in 2011 that the correct position was explained.
81. Mrs Haskey 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. The members' handbook said the deduction would not be more than the state pension, but also included the statement that, for women, they would receive their state pension at age 60. So there was an indication that the deduction would apply from age 60. 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.
82. Taken together, the information provided was inconsistent and unclear. It is easy to see how Mrs Haskey might not have been clear whether the deduction would apply when she reached age 60 or when she actually received her state pension.
83. The next question, therefore, is whether she acted on the information she received to her detriment.

84. If Mrs Haskey 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.
85. Mrs Haskey says that she and her husband decided to sell their second car in February 2012 to reduce their outgoings. She says that they would have sold the car earlier had she been informed in 2010 that her pension would be reduced. The second hand car was purchased in 2007 when both Mr and Mrs Haskey moved to France. The state scheme deduction would not be made until 2014. They have had use of the car up until the time they sold it. Therefore, I am unable to see that she either relied on the information to her detriment or has suffered a financial loss in delay in selling the car.
86. Mrs Haskey says that had she been provided with different information she would have either taken a lump sum or delayed taking her pension. She also says that when she received the pension illustrations she decided to maximise her annual pension. The reason she gave for this was because of the fall in sterling against the euro. If she was to take a lump sum, this effectively would have meant that she would receive a lower pension. She has not demonstrated that taking a lump sum would have increased her overall income.
87. With regard to delaying taking her pension, she has said that the reason she took her pension early was because they wanted to convert their income to euros. Delaying taking her pension would have meant that she would not have had the income from her pension to convert to euros. Once again, she has not demonstrated that had she been given different information she would have deferred taking her pension.
88. Turning now to the renovations Mrs Haskey made to her home, the improvements would have increased its value. Therefore, I am unable to find that she has suffered any financial loss. In addition, I cannot see that had she been given different information it would not have gone ahead with the improvements she made to her home or would not have replaced her old computer when she did.

89. With regard to the fact that she did not take a holiday before 2010/11, I cannot see that if she had been given different information she would have been able to go on holidays before 2010/11. There are many reasons why people do not go on a holiday.
90. Mrs Haskey says that she was paid what the Trustee contracted to pay her in 2010. There are certain basic requirements - intentions to create legal relations, offer, acceptance, consideration and capacity to make a contract – for making a valid contract. She has not demonstrated that these requirements have been met and therefore a contract exists.
91. In my judgment, Mrs Haskey has not demonstrated that she did rely on the incorrect information provided to her when deciding to retire or that she has suffered a loss of income. However, from her point of view, her income for about six years, between 2014 and 2020, will be considerably lower than she thought it would be. She has undoubtedly suffered some distress at learning that the pension she is entitled to receive will in future be less than she was expecting. I shall therefore direct the Trustee to make a payment to reflect the distress caused.
92. 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.
93. 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

94. I direct that within 28 days the Trustee make a payment to Mrs Haskey of £200 in respect of the distress and inconvenience caused to her.

A handwritten signature in blue ink, appearing to read 'Jane Irvine'. The signature is written in a cursive style with a large initial 'J' and 'I'.

Jane Irvine

Deputy Pensions Ombudsman

30 December 2014