

Ombudsman's Determination

Applicant	Mr E
Scheme	Scotia Gas Networks Pension Scheme (the Scheme)
Respondents	Trustees of Scotia Gas Networks Pension Scheme (the Trustees)

Outcome

1. I uphold part of Mr E's complaint but there is a part which I do not agree with.
2. The Trustees shall pay Mr E £750 in respect of the significant distress and inconvenience he has suffered.
3. My reasons for reaching this decision are explained in more detail below.

Complaint summary

4. Mr E is unhappy that the Trustees will not pay him an unreduced pension from age 50.

Background information, including submissions from the parties

5. In 2005, the Scheme was established to provide retirement benefits for previous employees of relevant Lattice Group entities. This included Mr E, who was an employee of Scotia Gas Networks (**SGN**) at the time.
6. On 20 January 2006, Mr E was offered the possibility of a severance package by SGN, on the grounds that there was no longer a suitable position for him. The Minutes indicate that the meeting concluded with SGN confirming it would obtain exact quotes for Mr E regarding what his severance pay would be.
7. On 27 January 2006, Mr E met with SGN again to discuss his severance package. The Minutes of this meeting indicate that he was informed his pension would be reduced by 30%, if he withdrew it at age 50.
8. On 1 February 2006, Mr E was again informed that, if he took his pension at age 50, it would be subject to a 30% reduction.

9. On 8 February 2006, two copies of a Compromise Agreement were sent to Mr E to sign in relation to his severance. The document outlined Mr E's severance pay and various other provisions, but his pension benefits were not referred to.
10. On 1 and 3 March 2006, Mr E and SGN signed the Compromise Agreement respectively. The signed copy has been provided by Mr E, as the Trustees have been unable to produce one.
11. Mr E says it was agreed, at some point before 21 September 2006, that he would be able to draw a full pension from the Scheme at age 50. He confirms that he does not have a copy of this agreement in writing, but believes the documentation from September 2006 onwards reflects it.
12. On 21 September 2006, Mr E was sent a letter outlining his Scheme benefits. It appears this letter was sent from the pensions administrator, on behalf of the Trustees who have overall responsibility for Mr E's benefits. The letter stated:

"If you leave your benefits in our Scheme they will be paid on your normal retiral date (**Age 50**)."
[emphasis original]
13. On 30 September 2006, Mr E says his employment was terminated in accordance with the Compromise Agreement.
14. In April 2008, 2011, 2014 and 2015, Mr E received annual statements showing his deferred benefits. All of the statements said the date his benefits would become payable was 24/09/2016, or when he reached age 50. None of the statements indicated the benefits he would receive at age 50 would be anything less than the benefit estimates stated, which were his full benefits.
15. Mr E has sent evidence of the discussions he had with his financial advisor in the years leading up to his 50th birthday, which evidence he believed he would receive an unreduced pension from the Scheme at age 50. In particular, his financial advisor recorded that Mr E's would receive a full pension from the Scheme at age 50, and his recommendations for financial planning were based on this.
16. On 28 January 2016, Mr E opted out of another pension scheme which he was a member of, the Network Rail Pension Scheme. The evidence indicates he did this so he could apply for Individual Protection 2014, which he subsequently obtained.
17. On 2 February 2016, Mr E received a letter regarding his Scheme benefits. This letter confirmed that he had an annual deferred pension of circa £47,000, and that this was worth circa £957,000 for the purpose of his Lifetime Allowance.
18. On 12 August 2016, Mr E became aware that the Trustees intended to pay him a reduced pension if he wished to take his deferred benefits at age 50, so, Mr E raised a complaint.
19. The Trustees responded to Mr E's complaint saying that a 30% reduction will apply to Mr E's benefits if he wishes to take them at age 50, as per the Scheme rules. They

highlighted Rule 4.4.2, which states that a Scheme member may elect to take a pension at age 50 where he has been made redundant from the relevant employment between the ages of 40 and 45. However, there will be a 0.5% reduction for every month under the age of 45 years that the individual was made redundant.

20. Under Rule 4.4.2. the Trustees explained that a 30% reduction applies to Mr E's benefits. This is because Mr E was made redundant at age 40 years, or 60 months before age 45. As 60×0.5 is 30, the relevant reduction to apply is 30%.
21. Mr E argues that a specific arrangement ought to have been in place in relation to his benefits. He reiterates that there was an agreement with SGN that the normal rules of the Scheme would not apply to him, and he would be able to receive an unreduced pension at age 50.
22. The Trustees have said that what Mr E describes would be an augmented pension. However, under Rule 8.4, an augmented pension is only payable where the employer has requested it and paid the necessary additional contributions into the relevant member's fund. The Trustees have confirmed that SGN never informed them that Mr E was to receive an unreduced pension at age 50. In addition, the Trustees confirm that SGN has not paid any additional contributions towards Mr E's pension. As such, there are no additional funds available for the Trustees to pay him a full pension from an earlier age.
23. Mr E says he has relied on being told he would receive an unreduced pension at age 50, and emphasises that the documentation he has received since September 2006 has accorded with this understanding. In particular, Mr E says that his wife retired shortly after his 50th birthday, based on their belief that he could receive a full pension from the Scheme by that point. Mr E also says that he would not have opted out of the Network Rail Pension Scheme, had he been told different information. He explains that, if he had known he had more Lifetime Allowance remaining, he would have continued contributing into that scheme.

Adjudicator's Opinion

24. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-

- The Trustees must act in accordance with the Scheme rules. There is provision, under Rule 8.4, for the Trustees to provide Mr E an unreduced pension at age 50. However, the Trustees only have authority to do this if SGN has requested it and paid the necessary additional contributions in order to augment his pension benefit.
- The evidence indicates that SGN has not asked the Trustees to pay Mr E an augmented pension, or made the necessary payments for it to do so.

Furthermore, the Compromise Agreement does not refer to Mr E receiving an unreduced pension. As such, it is reasonable that the Trustees have said Mr E's benefits will be subject to the 30% reduction, as per Rule 4.4.2.

- The Adjudicator noted that Mr E had been sent benefit statements indicating he would receive an unreduced pension from age 50. However, whilst it was unclear exactly why the mis-statements had been provided, she did not believe this was sufficient evidence on its own that Mr E ought to receive a higher pension.
- The Adjudicator was also not satisfied that the mis-statement had caused Mr E to suffer a financial loss. She noted that he had clearly carried out his financial planning jointly with his wife. However, his wife had retired after he had raised his complaint, and so they would have known he was not receiving an unreduced pension at age 50 when she retired. The Adjudicator was also persuaded that Mr E would have applied for Individual Protection 2014, whether he had been provided the mis-statement or not. This was because the information Mr E was provided about how much of his Lifetime Allowance had been used by his Scheme benefits was not necessarily incorrect. It was just the case that Mr E thought this amount would provide him an unreduced pension from age 50.
- Overall though, the Adjudicator was satisfied that Mr E had reasonably believed he would receive an unreduced pension from the Scheme at age 50, and that he would now have to urgently reconsider his financial and retirement arrangements.

25. The Adjudicator recommended that the Trustees offer Mr E £750 for the distress and inconvenience caused, and the Trustees had agreed to this.

26. Mr E did not accept the Adjudicator's Opinion or the Trustee's offer and the complaint was passed to me to consider. In particular, Mr E has contested the Opinion on the basis that:-

- The fact that the Trustees could not provide a signed copy of the Compromise Agreement is evidence that it has an incomplete record for his previous employment with SGN.
- If SGN needs to pay additional contributions into the Scheme, in order for him to receive an unreduced pension at age 50, this can still be done.
- The Compromise Agreement was silent on the subject of whether he could receive an unreduced pension at age 50. The letter dated 21 September 2006, should therefore be seen as the written agreement on this.

27. Mr E's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

28. The Trustees are obliged to pay Mr E pension benefits in line with the rules of the Scheme. In the absence of evidence that his pension ought to be augmented, the Trustees have acted accordingly by offering Mr E a reduced pension at age 50.
29. If SGN agreed for Mr E to receive an unreduced pension at age 50, as part of the terms on which he left his employment, then I would expect this to have been referred to in the Compromise Agreement. I do not consider that the letter dated 21 September 2006, forms part of the Compromise Agreement and as such I agree it is more reasonable to consider it to be a mis-statement.
30. For completeness, I would not expect the Compromise Agreement to specifically state that Mr E would receive a reduced pension from age 50. This is because this would be the normal position under the Scheme rules, and so there would be no need to state it expressly. Therefore, the fact that the Compromise Agreement is silent on the subject of whether Mr E ought to receive a reduced pension at age 50 or not, is no reason to place more weight on the letter dated 21 September 2006.
31. I appreciate that Mr E has said SGN could pay additional contributions into the Scheme at any time. However, until such time as it does so, the Trustees are unable to pay Mr E an unreduced pension from age 50. This is because the Scheme rules do not permit them to do so.
32. Lastly, Mr E believes that his employment record with SGN must be incomplete. If this is the case, then that is unfortunate. However, I have considered the information that is available, and I find that the Trustee's only administrative error was issuing incorrect benefit statements. I appreciate Mr E will have suffered a significant loss of expectation as a result of this, but the Trustees are not required to pay him a higher pension.

Directions

33. Within 21 days of the date of this Determination, the Trustees shall pay Mr E £750 for the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
11 July 2018