

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

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| Applicant | Mrs Susan Counsell |
| Scheme | Marks & Spencer Pension Scheme (the Scheme) |
| Respondent(s) | Marks & Spencer Pension Trust Ltd (the Trustee) |

Subject

Mrs Counsell complains that the Trustee has applied the state benefit deduction from age 60, even though she will not receive her state pension until age 65.

The Deputy Pensions Ombudsman's determination and short reasons

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

DETAILED DETERMINATION

Material Facts

1. Mrs Counsell's date of birth is 25 November 1955. She was employed by Marks and Spencer (the **Company**), but left their employment on 30 June 1992. During this time she was a member of the Scheme. Once Mrs Counsell 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 Counsell 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 Counsell was sent a certificate on 13 August 1992 from the Trustee setting out her entitlement on leaving the Scheme. The certificate stated that her normal retirement date is 30 November 2015 and her state retirement date is 25 November 2015. The certificate informed her that when she reached normal retirement date she would be entitled to a pension of £22,189.91, which “takes into account the deduction to be made when you reach state retirement age”.
12. In a letter dated 2 May 2008 the Trustee gave details of Mrs Counsell’s estimated pension; a full pension of £13,302 payable from 30 November 2015 or a reduced pension of £9,713.00 plus a lump sum of £43,074.00. The letter advised that the pension would be reduced when she reached SPA; the amount of the reduction was £1,551.02 at that time, but would increase in line with the increases applied to the pension.
13. In a letter dated 19 October 2010 the Trustee informed Mrs Counsell that a full annual pension of £16,430.00 was payable from 30 November 2015. It added that the pension will reduce when she reached SPA which at the time was £1,626.03.
14. On 26 August 2011 the Trustee wrote to Mrs Counsell stating that she may have recently received a retirement quotation advising that if she drew her pension early it would reduce from 25 November 2020, the date she expected to reach SPA. The Trustee added that as a result of the Government’s proposal to change SPA, it had recently reviewed how the 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 25 November 2020, when she

reached 65, as advised in the quotation. The letter offered an apology for having provided incorrect information regarding the timing of the deduction.

15. 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.
16. 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.
17. 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’.
18. On 28 September 2011 the Trustee wrote to Mrs Counsell confirming that the full yearly pension payable from 31 October 2015 would be £16,646.00. It added that her pension will reduce in line with the Scheme rules and due to the change

in SPA the deduction will be applied in two stages: the first deduction of £1,429 per annum will be on 1 December 2015, when she reaches age 60; and the second of £247 per annum, will be applied from 1 December 2020.

19. Mrs Counsell complained to the Trustee. She said:
- Its letter of 26 August 2011 informed her that the state pension deduction would now take effect from when she reached age 60 and not 25 November 2020.
 - She considered this to be extremely unfair. Whilst she realised that the change had come about due to changes to the female SPA by the Government in 1995, she considered that it had been negligent in not informing her before now. She thought that she should have been informed of the change at that time, which would have given her 20 years to save or invest in order to recoup the £7,145 she was going to lose, rather than the four years she had left.
 - The only fair resolution would be if the Trustee was to make up the shortfall in pension of £1,429 a year between her 60th and 65th birthday, as a goodwill gesture.
20. The Trustee wrote to Mrs Counsell on 8 November 2011 and requested further information 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.
21. Mrs Counsell responded saying that:
- The certificate she received at the time she left the Company said that the deduction would be made at age 60. The certificate stated that her state retirement date was 25 November 2015. When the female state retirement date subsequently changed after 1995 to 25 November 2020, how and why was she supposed to know that the deduction date remained the same? In the absence of any correspondence from the Trustee, she carried on with the previous assumptions that her pension would be somewhere around the maximum quoted figure on the certificate.

- When she asked for quotes in 2008 and 2010 the letters from the Trustee referred to SPA which it must have known was then 65, but this was not pointed out to her at the time.
 - In October 1996 she purchased a home and took out a mortgage which was to be repaid by October 2022 when she was almost 67. Her plan was to be able to pay the mortgage out of a combination of her pension from the Scheme, her pension from her current employer's scheme and her state pension. When it became clear that she would not receive her state pension until age 65, later changed to 66, as her financial circumstances have allowed she tried to overpay a little extra each month to reduce the mortgage and hopefully finish a little earlier. She is now not able to do this, as the pension from the Scheme would be £1,429 a year less than she had expected. In addition she took out a second mortgage in 1997 for home improvements which finishes in January 2017.
 - She cannot see the need for the Trustee to know her current income and expenditure because what will count is the income she will have when she is 60, when she receives her pensions. This will be a combined total of £18,138 if she took the maximum lump sum of £65,563 from the Scheme, which was her intention. She owns shares in the Company and another company, which she intends to sell to replace her bathroom. She owns a car for which she has a loan for over the next four years. Like most people, she has brought up a family with all the commitments that entails so she has no real savings, relying on a decent pension when she retires. Her outgoings other than her mortgage will be similar to everyone else's, i.e. council tax, utility bills, food, petrol, insurances, general home maintenance and living expenses and hopefully the occasional holiday. Her husband is still currently working but earns less than her and will have a lower pension.
 - When she reaches age 60 she would have worked full time for 42 years.
22. On 21 December 2011 the Trustee wrote to Mrs Counsell confirming that she was receiving the correct entitlement under the Rules. The Trustee said that it could see how she may have expected the deduction date to have changed in view of the two letters she received dated 19 October 2010 and 2 May 2008. It

recognised that the letters could, with hindsight, have given the deduction date, i.e. age 60, as opposed to stating that the deduction would occur at SPA. It apologised for this. However, for her complaint to be upheld, she also needed to demonstrate that she had suffered an actual financial loss. Taking everything into account, it was not felt that she had sufficiently demonstrated either reliance or actual financial loss. Consequently, it rejected her complaint.

Summary of Mrs Counsell's position

23. Under the 1998 Rules the definition of SPA was amended and this together with the provisions of rules 16.2 and 16.5 meant that the state pension deduction would not be applied until she reached her revised SPA, i.e. 65, as originally envisaged by the Pensions Act 1995.
24. 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"*.
25. 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.
26. It is clear that prior to the review referred to in the Trustee's letter dated 26 August 2011, the Trustee believed that the deduction would only apply from her revised SPA.
27. 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, and in part from her originally envisaged revised SPA of 65. 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 65, and to apply part of the deduction

before age 65 would be in contravention of clause 4 of the 2011 Deed and would breach her subsisting right.

Summary of the Trustee's position

28. Mrs Counsell's benefits are governed by the Trust Deed dated 7 August 1984 and the Supplemental Deed dated 25 November 1988. These provide that the state scheme deduction should be applied at pensionable age (the final paragraph of rule 5(a) of the 1984 Deed). This is to be read by reference to the Social Security Pensions Act 1975. Therefore with regard to pensionable service on and after 17 May 1990, her "pensionable age" will be age 60.
29. 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 reference to "pensionable age" and this does not apply here.
30. Part of Mrs Counsell's pension is attributable to pensionable service on or after 17 May 1990. Against the background of the equalisation requirements in the Pensions Act 1995, the state scheme deduction in respect of that period of pensionable service is applied at the date which was her statutory SPA under that Act. This is age 65. However, it does not believe that she is disputing that is correct.
31. Mrs Counsell has complained that she should have been informed of the change to the state scheme deduction before 2011. Together with the Company it entered into the 2011 Deed to confirm the position under the Rules in force at that date, including the application of the 1998 Rules to relevant members. The 2011 Deed did not, in itself, make a change to her entitlement under the Rules. Therefore, there has been no change to the amount of pension to which she is legally entitled.
32. It acknowledges that she was provided with retirement quotations and correspondence which stated that the state scheme deduction would be applied from 2020.
33. 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.

34. 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.
35. It acknowledges that in some cases, a member may be able to demonstrate that he or she acted upon information provided, that it was reasonable for the member to do so and that the member has suffered actual financial loss in respect of which it may be liable to compensate the member. This does not, however, amount to a requirement for it to honour the information given.
36. Mrs Counsell has claimed that she decided to enter into several financial commitments based on information provided, which she would not otherwise have entered into had she known her correct entitlement. However, she did not provide any evidence to support this claim or any actual financial loss suffered as outlined below:
 - There is no evidence that she would not have taken the mortgage if she had been given correct information at the outset, and there is no evidence that she is unable to afford the payments.
 - It may be the case that she cannot afford to keep “overpaying” the mortgage and that ultimately the mortgage will cost her more. However, that does not mean that she is in a worse position than if the correct position had been notified to her throughout.
 - It would be reasonable to assume that she benefited from an increase to the value of her property as a result of home improvements and there is no suggestion that she is being forced to sell her house at a loss. Therefore, this would not have caused her financial loss.

Conclusions

37. 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.

38. 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.
39. 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.
40. 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.
41. 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.
42. 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).
43. 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 Counsell now has a SPA of 66 and will receive her basic state pension on November 2021, 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 2015 when she reaches 60. So there will be a gap of six

years when her Scheme pension will be reduced but she will not yet be receiving her basic state pension.

44. Mrs Counsell 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.
45. It follows from my conclusion in Mrs Thew's complaint that Mrs Counsell has not suffered unlawful sex discrimination, but there remains the question of whether her pension has been dealt with in accordance with the Rules.
46. This question turns on the definition of SPA and, thus, the date at which the state pension deduction should be applied. Mrs Counsell 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.
47. 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”.
48. 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 Counsell's situation, the deduction is not to be taken until the member reaches SPA.
49. That leads to the next question, which is what her SPA is.

50. 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.
51. 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.
52. However, Mrs Counsell left service in 1992. She then became a deferred member and her benefits crystallised then. She was entitled to a deferred pension under Rule 15, which would be paid to her when she 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.
53. 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 Counsell left and became a deferred member in 1992 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.
54. 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 Counsell became entitled to this at age 60. Accordingly, the Trustee is correct to say that is the relevant age.

55. Mrs Counsell says that 1998 Rules gave her existing right for the state pension deduction not to be applied until she was 65, and to apply part of the deduction before age 65 would be in contravention of clause 4 of the 2011 Rules and would breach her subsisting right.
56. The 2011 Rules say that the relevant meaning is as originally enacted in the Pensions Act 1995. On that basis, Mrs Counsell'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?
57. Mrs Counsell'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.
58. 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.
59. The complaint as put to me by Mrs Counsell is that the definition of SPA under the Rules was amended and this meant that the state pension deduction would not be applied until she reached age 65. There has not, however, 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.
60. I therefore find that the Trustee has dealt with Mrs Counsell'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.

61. The explanatory booklet to the Scheme refers to state pension deduction taking effect from the date the member reaches SPA. This is repeated in the Trustee's letters of May 2008 and October 2010.
62. 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.
63. If Mrs Counsell can show that she relied on the information to her detriment, she may pursue a claim in respect of any loss she has suffered as a result. The Trustee considered this point but concluded that Mrs Counsell has not provided sufficient evidence that she acted to her detriment in reliance on the incorrect information provided to her.
64. There is no doubt that the information provided to Mrs Counsell 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 2015, on other occasions simply that it would be at state retirement age, and later that it would be in 2020. It was only in 2011 that the correct position was explained. Mrs Counsell 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.

65. Taken together, the information provided was inconsistent and unclear. It is easy to see how Mrs Counsell might not have been clear whether the deduction would apply when she reached age 60 or when she actually received her state pension.
66. The next question, therefore, is whether she acted on the statements made to her detriment.
67. The Trustee concluded that Mrs Counsell would have made the same decisions had she been provided with accurate information. In coming to this conclusion, the Trustee took into account that she did not provide evidence to show that had she been given the correct information she would not have taken out the mortgage; to show that she was unable to afford the mortgage payments; no suggestion that she would be forced to sell her house at a loss; the fact she may not be able to afford to keep “overpaying” did not mean that she was in a worse position than if the correct information was provided in the first place; and she benefited from an increase in the value to her property as a result of the home improvements.
68. The Trustee was right to ask for, and consider, details from Mrs Counsell about her financial circumstances. Mrs Counsell says she took on her mortgage in 1996 and her plan was to pay the mortgage out of a combination of her pension from the Scheme, her pension from her current employer’s scheme and her state pension. However, even allowing for the fact that the mortgage was to be repaid by 2022, at the time she took it out she had 19 years to go to her normal retirement date under the Scheme and 24 years until her state pension became payable, which would have given her a considerable amount of time to reduce her mortgage before she started to receive her pension. Therefore, in my view, the basis on which she had taken out the mortgage was more likely to have been based on her earnings at the time rather than the levels of her future pensions.
69. In my judgment, Mrs Counsell has not demonstrated that she did rely on the incorrect information provided to her when deciding to take out her mortgage. She has had the benefit of living in the property since 1996. It is more likely than not she and her husband would have bought a house in any event, since they needed somewhere to live, and clearly had other sources of income which they have used to fund their living costs over the last 18 years.

70. I do not consider that Mrs Counsell has suffered any financial loss. The difference between the income she will receive and the income she expected to receive is about £1,429 a year for five years. In the context of taking on the large financial commitment of a mortgage over a period of 20 years or more, that is a relatively modest amount. Decisions were made to buy a house many years ago, based on a variety of factors. At the time they made those decisions, they could not have been certain what their employment circumstances or income would be over the following years. The future changes in state retirement age would not have been known either to them or the Trustee. It is more likely than not that they would have taken out their mortgage in order to purchase their home in any event. I have great sympathy for the difficulties they now face, but those arise through a combination of circumstances and they would likely have been in the same situation regardless of the information provided in the past about the state pension income.
71. For all these reasons, I am not satisfied that Mrs Counsell has suffered a financial loss.
72. However, Mrs Counsell 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. I shall therefore direct the Trustee to make a payment to reflect the distress caused.
73. 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.

74. 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 an appropriate remedy.

Directions

75. I direct that within 28 days the Trustee makes a payment to Mrs Counsell of £200 in respect of the distress and inconvenience caused to her.

Jane Irvine
Deputy Pensions Ombudsman

18 November 2014