

**Postal address**

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Extension**Date**

2 November 2016

Our number

2016.20077

Your reference**Enclosures**

1

Contact person**Subject**

End of investigation

Dear Ms,

You filed a complaint with the National Ombudsman of the Netherlands on 18 June 2016 about the Public Body of Sint Eustatius. You complained that the Public Body had not provided any data to the Caribbean Netherlands Pension Fund (*Pensioenfonds Caribisch Nederland*, PCN), thus preventing calculation of your pension accrued over the years of 1998 to 2010. I informed you on 4 July 2016 that we had started an investigation into the complaint. I wish to inform you of the outcome of our investigation.

Background

On dissolution of the Netherlands Antilles, the commitments of the General Pension Fund for the Netherlands Antilles (*Algemeen Pensioenfonds voor de Nederlandse Antillen*, APNA) were spread across Curacao, Sint Maarten and the Netherlands for Saba, Sint Eustatius and Bonaire. For the Caribbean Netherlands, the commitments were placed in the Caribbean Netherlands Pension Fund (*Pensioenfonds Caribisch Nederland*, PCN). This distribution was based on pension records kept by APNA.

It has transpired that there are people who accrued pension rights but were not included in PCN's records. PCN did not receive any money for these people. In a letter sent to an affected person, PCN said it would do its utmost to rectify the omissions in the administration of the pensions. According to PCN, this meant that it had to have the right information to assess the pension entitlements and that it had as yet to receive the deductible contributions, including statutory interest. This was necessary to fulfil its obligations.

Complaint made known

We made your complaint known to the Public Body of Sint Eustatius. This is because from 1998 to October 2010 the Sint Eustatius island region was responsible for paying your salary and for remitting pension contributions.

The constitutional change of the Sint Eustatius island region in October 2016, making the Public Body of Sint Eustatius a special municipality of the Netherlands, made the Public Body responsible for payments and remittances made in the preceding period by the Sint Eustatius island region. Therefore, the Public Body of Sint Eustatius must provide the information about your accrued rights.

We subsequently received the following response from the Public Body. The Public Body of Sint Eustatius acknowledged that from 1998 to 2010 it was responsible for remitting your pension. Provision of information about your pension to the Caribbean Netherlands Pension Fund Foundation (PCN) was said to have been delayed because of a different prioritisation at the Executive Council and at the Finance Department. The Public Body of Sint Eustatius said it had hired two holiday relief workers to gather the information. The Public Body said it expected to be able to gather and send out all information by the end of July 2016. According to the Public Body, PCN would officially set the rights if the Public Body was unable to provide (all) information to PCN. A number of agreed rules would be observed. The Public Body said it had no objection.

We have not yet received any notification from the Public Body about the current status, despite our reminders. In an e-mail dated 30 August 2016, you responded to the above-mentioned reaction.

Findings and assessment

Your entitlement to a pension is beyond question. So is your remittance of pension contributions. After all, the Sint Eustatius island region paid your salary in the 1998-2010 period and deducted pension contributions from it. However, the contributions deducted from your salary do not appear to have been received by PCN. To date the Public Body has failed to inform PCN about the information required to determine your right to a pension. You indicated that you personally held the information necessary for this. Your rights could therefore be calculated by using this information.

The National Ombudsman checks whether authorities are acting properly. One of the requirements it is that authorities must be honest and reliable. A reliable authority acts honestly and sincerely within the statutory framework. It must also keep proper records.

Members of the public must be able to rely on authorities working securely and avoiding sloppiness. Moreover, people are entitled to expect the swift correction of any mistakes. A properly functioning authority does not shift on to members of the public problems that it has in performing its work.

The obscurity surrounding your pension stems from careless action by the Public Body and inadequate efforts to look for a solution. For years you have been endeavouring to obtain clarity about your pension without the Public Body taking any concrete action. The Public Body's stated expectation of gathering all information by the end of July of this year and the subsequent absence of any reaction, even after reminders, confirms the picture of an authority that through insufficient action is not taking its responsibility. Your complaint is legitimate.

What now?

Your complaint is not the only one. More people have been confronted by the same problems. Your colleagues and people who worked prior to October 2010 at one of the other government agencies and educational institutes have the same problem.

The problems must primarily be solved from the point of view of the people entitled to pensions. They must quickly be offered a solution. Invoking responsibility for the problems that have arisen is a separate process unrelated to the solution to be found for the affected people.

If it is likely that a person was employed and insured (obligatorily) for his/her pension, it is incumbent upon the authorities to find a solution quickly to the obscurity that has arisen. A heavy burden of proof should not be imposed on people entitled to a pension. They deserve the benefit of the doubt given the problems that have occurred.

In your case, the solution will need to come primarily from the Public Body. However, if they do not put forward a solution, the central government should take it upon itself to safeguard the accrued rights of members of the public.

The Minister of the Interior and Kingdom Relations informed the President of the House of Representatives by letter on 5 October 2016 that he would look for a solution for the employees for the non-remitted mandatory pension contributions.

The goal is to ensure incorporation of the missing pension rights (missing years of service or salary adjustments) and rectification of the pension accrual omissions. For the other employees (working for the island government or at schools) the Minister says the Public Body or the schools are responsible for providing the required information.

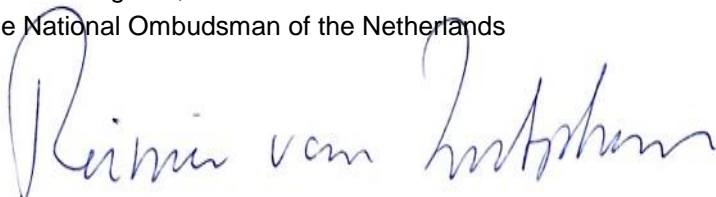
From the point of view of the affected members of the public, the distinction being made here is unjustifiable. After all, the problem arose due to the constitutional reforms and the resulting dissolution of APNA. I am of the opinion that there is no reasonable argument for making a distinction whereby central government safeguards only the rights of employees who happen to be currently working for the National Office for the Caribbean Netherlands. After all, this is about making sure that nobody with pension entitlements incurs damage.

During the debate on this matter in the Dutch Senate in June of this year, a question was raised as to whether the government felt responsible for ensuring a correct transfer of pension schemes from APNA to PCN. In reply, reference was made to the conditions contained in the agreement between the State of the Netherlands and PCN, and to PCN's responsibility for managing the pensions after the transfer. However, I am of the opinion that juridification should never be used as an argument for the government's omission to restore the rights of members of the public.

I will ask the Minister of the Interior and Kingdom Relations about the possibilities he has for ensuring that the Public Body comes up with the required information and pays any contributions that may be owed. I enclose a copy of my letter to the Minister of the Interior and Kingdom Relations.

I have sent a copy of this letter to the Public Body of Sint Eustatius. I will inform the Minister of the Interior and Kingdom Relations of the National Ombudsman's position in this matter. An anonymised version of this letter can be found on our website at www.nationaleombudsman.nl.

With kind regards,
The National Ombudsman of the Netherlands

A handwritten signature in blue ink that reads "Reinier van Zutphen". The signature is written in a cursive style with a large initial 'R'.

Reinier van Zutphen



The Minister of the Interior and Kingdom Relations
Mr R.H.A. Plasterk
P.O. Box 20011
2500 EA The Hague
The Netherlands

Dear Minister,

In this letter I would like to inform you about my assessment of a complaint concerning the Public Body of Sint Eustatius submitted by Ms ..., a teacher at a secondary school on Sint Eustatius. The complaint concerns the failure of the Public Body of Sint Eustatius to supply information to the Caribbean Netherlands Pension Fund (*Pensioenfonds Caribisch Nederland*, PCN). PCN needs this information in order to evaluate the pension claims of people who have accrued pension entitlements but have not been included in the administration system of PCN (and its predecessor APNA).

In this individual case, I concluded that the lack of clarity concerning the pension entitlements is caused by negligence on the part of the Public Body and an insufficiently proactive approach to finding a solution. The complaint is therefore upheld.

On 5 October 2016, you informed the House of Representatives about the findings of a file investigation conducted by PCN into missing pension funds and individual pension entitlements. You have stated that you are searching for a solution for the unpaid mandatory pension contributions on behalf of the National Office for the Caribbean Netherlands. The goal is to incorporate the missing pension entitlements (missing years of service or salary adjustments) and to rectify the omissions in pension accrual. With respect to the other affected employees (working for the island government or in schools), you have stated that the Public Bodies and the schools, respectively, are responsible for providing the required information.

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Subject

Caribbean Netherlands Pension
Fund

However, the distinction made here cannot be justified from the perspective of the citizens concerned. After all, this problem arose due to the constitutional reforms and the resulting dissolution of APNA. In my opinion, there is no reasonable basis for a distinction whereby the national government only safeguards the rights of employees who happen to be currently working for the National Office for the Caribbean Netherlands. After all, the key principle is that the interests of all employees with pension entitlements should be protected.

During the debate on this matter in the Dutch Senate in June 2016, a senator asked if the government felt responsible for ensuring the correct transfer of pension schemes from APNA to PCN. In reply, reference was made to the conditions included in the agreement between the State of the Netherlands and PCN, and to PCN's responsibility for managing the pension scheme following the transfer. However, I am of the opinion that juridification should never be used as an argument for the government's failure to fully protect the rights of citizens.

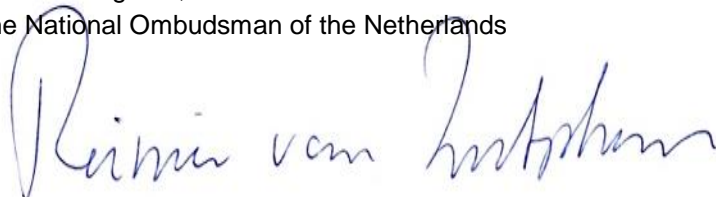
Question

I would like to ask you which courses of action are open to you to ensure that the Public Body of Sint Eustatius retrieves the required information and pays any pension contributions due. In addition, please inform me of your views concerning your responsibility, in your capacity as coordinating member of government, if the Public Body does not quickly provide a solution to the disadvantaged employees for the problems that have arisen.

I look forward to receiving your reply.

With kind regards,

The National Ombudsman of the Netherlands

A handwritten signature in blue ink that reads "Reinier van Zutphen". The signature is written in a cursive style with a large initial 'R'.

Reinier van Zutphen



Acting Governor of the Public Body of St Eustatius
Attn.: Mr J. Woodley
Government Guesthouse
Oranjestad, Sint Eustatius
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Contact person

Subject

End of investigation

Dear Mr Woodley,

We informed you in a letter dated 4 July 2016 that we were going to investigate a complaint made by Ms about the Public Body not providing any information to the Caribbean Netherlands Pension Fund (PCN) and thus preventing calculation of the pension she accrued over the years of 1998 to 2010. We put questions to you about the complaint and asked you to make known your position.

In an e-mail dated 3 August 2016, the Public Body answered our questions. The Public Body made known in the same e-mail that it expected to be able to gather all information and send it to PCN by the end of July. Despite reminders we have received no further correspondence from the Public Body about the current status of this matter.

Copy

To keep you abreast of the handling of the complaint of Ms ..., I enclose a copy of the letter and enclosure that I sent her today.

Summary of opinion on Public Body

The complaint of Ms ... has been upheld. The obscurity surrounding her pension stems from careless action on the part of the Public Body and an insufficiently proactive approach to finding a solution. Ms ... has been trying for years to obtain clarity about her pension without any concrete action having been taken by the Public Body. The Public Body's expressed expectation that it would gather all information by the end of July of this year and the subsequent absence of any reaction whatsoever, even after reminders, confirms the picture of an authority that is not taking its responsibility because of an insufficiently proactive approach.

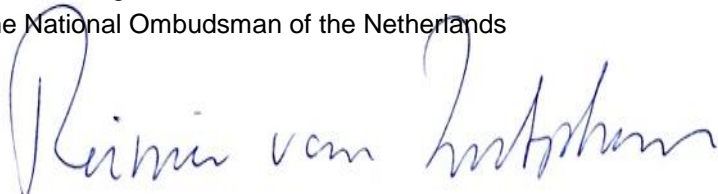
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The solution must come primarily from the Public Body.

An anonymised version of this letter can be found on our website at www.nationaleombudsman.nl.

With kind regards,

The National Ombudsman of the Netherlands

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Reinier van Zutphen