

Ombudsman's Determination

Applicant	Mrs D
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Pensions

Outcome

1. I do not uphold Mrs D's complaint and no further action is required by NHS Pensions.

Complaint summary

2. Mrs D has complained that NHS Pensions overstated the pension and lump sum benefits she was due from the Scheme.

Background information, including submissions from the parties

3. On 1 September 1998, Mrs D joined the 1995 Section of the Scheme. At the time she was in part-time employment with the NHS.
4. In 2010, NHS Pensions gave Mrs D the option to remain in the 1995 Section of the Scheme or transfer to the 2008 Section. To illustrate the different benefits offered by both Sections, NHS Pensions provided a statement (**the 2010 statement**), based on a full-time equivalent (**FTE**) pensionable pay figure of £24,156.00 that said:-
 - If Mrs D remained a member of the 1995 Section of the Scheme and took her retirement benefits when she reached her normal pension age (**NPA**), age 60, she might receive:
 - an annual pension of £4,618.00 and a lump sum of £14,454.00, if she opted for the standard benefits; or
 - a reduced annual pension of £3,872.00 and a lump sum of £25,811.00, if she opted for the maximum lump sum.
 - If Mrs D moved to the 2008 Section of the Scheme, and took her retirement benefits when she reached age 60, five years before this Section's NPA, her benefits would be reduced and she might receive:

- an annual pension of £4,243.00 and a lump sum of £7,164.00, if she opted for the standard benefits; or
 - a reduced annual pension of £3,112.00 and a lump sum of £20,746.00 if she opted for the maximum lump sum.
5. The 2010 statement explained that the figures were based on the most up-to-date information that NHS Pensions held. They were for illustrative purposes only and were not guaranteed.
 6. NHS Pensions asked Mrs D to complete the relevant form if she wished to transfer to the 2008 Section of the Scheme.
 7. Mrs D opted to remain a member of the 1995 Section of the Scheme.
 8. On 20 April 2016, NHS Pensions provided Mrs D with a statement of her current pension benefits (**the 2016 statement**), as “an estimated quotation only”. It showed that, based on an FTE pensionable pay figure of £27,458.58, at NPA Mrs D might receive:
 - an annual pension of £5,584.66 and a lump sum of £16,753.97, if she opted for the standard benefits; or
 - a reduced annual pension of £4,487.67 and a lump sum of £29,917.82 if she opted for the maximum lump sum.
 9. In December 2016, Mrs D reached NPA. Mrs D has said that she continued to work to “boost” the lump sum available to her when she retired.
 10. On 19 June 2018, Mrs D’s employer (**the Employer**) approved her request to take flexible retirement from 19 November 2018.
 11. On 15 August 2018, NHS Pensions received Mrs D’s retirement application form requesting the “standard benefits option.”
 12. On 25 September 2018, Mrs D contacted NHS Pensions for an estimate of her pension benefits. NHS Pensions has said that Mrs D was employed in two part-time posts, so it used the hours worked and pay information supplied by the Employer to calculate her pensionable pay figure.
 13. On 24 October 2018, NHS Pensions issued Mrs D with a benefit statement (**the 2018 statement**), as “an estimated quotation only.” It showed that, based on a pensionable pay figure of £49,028.47 on retirement from 18 November 2018, she might receive:
 - an annual pension of £11,267.90 and a lump sum of £33,803.70, if she opted for the standard benefits; or
 - a reduced annual pension of £9,054.56 and a lump sum of £60,363.75 if she opted for the maximum lump sum.

14. Mrs D has said that she telephoned NHS Pensions on 29 October 2018, to query the figures in the 2018 statement and was informed that she would “definitely receive £60,363.75 as a lump sum and £754.00 per month pension.” NHS Pensions has said that the call recording is no longer available, but the call notes say:

“Member has received benefit statement (scanned 24/10/2018). Adv member on their AW8 they have opted to receive standard benefits rather than commute pension for larger lump sum. Adv member to write in if they wish to commute for largest tax free lump sum and reduced pension.”

15. On 5 November 2018, Mrs D wrote to NHS Pensions and requested the maximum lump sum option.

16. On 27 November 2018, NHS Pensions began processing Mrs D’s retirement application. During this process, it became aware that some of the information provided by the Employer regarding Mrs D’s pensionable pay and hours was incorrect. NHS Pensions noticed that Mrs D had overpaid her pension contributions and arranged for her to receive a refund.

17. In early January 2019, NHS Pensions contacted the Employer again because it considered that the information it had received was incorrect.

18. Once NHS Pensions was satisfied that it had received the correct information, it calculated Mrs D’s retirement benefits to be:

- annual pension of £5,227.91; and
- a maximum lump sum of £34,852.72.

19. On 23 January 2019, NHS Pensions paid Mrs D a lump sum of £34,852.72. In response, Mrs D telephoned NHS Pensions to query the amount because it was lower than she had expected. Mrs D also contacted the Employer and it informed her that:-

- The 2018 statement was incorrect because she had “never had a pensionable pay [of approximately £49,000.00].”
- NHS Pensions “should have spotted” that the pensionable pay was incorrect but had never contacted the Employer to query it.
- She should contact NHS Pensions if she wanted to escalate the issue further.

20. On 2 February 2019, Mrs D raised a complaint under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). In summary, she said:-

- She had contacted NHS Pensions after she received the 2018 statement and it had “confirmed that the figures were correct.”
- She had contacted NHS Pensions after she received the lump sum because it was around £25,000.00 less than she had expected. During this telephone

conversation, NHS Pensions informed her that the 2018 statement had been calculated incorrectly.

- This “catastrophic and inexcusable mistake” had impacted on her future plans.
- NHS Pensions should honour the 2018 statement, pay her interest on the lump sum from 21 November 2018 to 23 January 2019.
- NHS should pay her compensation.

21. On 29 March 2019, NHS Pensions issued its response under stage one of the IDRPs and said:-

- Mrs D was an active member of the Scheme from 1 September 1998 until she retired in November 2018. During her employment, she worked in part-time positions.
- It relied on employers to provide the correct pensionable pay and information on the hours worked so that it could calculate benefits accurately.
- As a member of the 1995 Section of the Scheme, Mrs D’s benefits were calculated using “the accrued membership for benefit purposes and [her] highest pensionable pay figure of [her] last three years of active membership.”
- Mrs D held “concurrent [and part-time] positions” so the “composite” pensionable pay figure took all of her employment into account, as with a full-time worker.
- NHS Pensions received Mrs D’s retirement application form in August 2018, which said she would retire on 18 November 2018. It aimed to pay all lump sums the day after a member retired, but in Mrs D’s case payment was not made until January 2019, so it upheld this part of her complaint.
- Under the Regulations that govern the Scheme, pension on retirement must be paid monthly. Otherwise, the Scheme must pay interest on those benefits. It had not paid Mrs D’s pension because the Employer had to reconfirm the data that it had provided to NHS Pensions which caused a delay.
- NHS Pensions would calculate the interest that Mrs D was due and pay the amount to her bank account directly.
- The Employer had provided incorrect pay details and working hours, so the 2018 statement was incorrect.
- NHS Pensions had paid Mrs D the correct amount and could not offer compensation or honour the overstated figures.

22. Mrs D remained dissatisfied and asked NHS Pensions to review her complaint under stage two of the IDRPs.

23. On 20 May 2019, NHS Pensions provided its response under stage two of the IDR. It repeated the points made in paragraph 20 above and also said:-

- It could not pay Mrs D a level of benefit she was not entitled to receive.
- The 2010 and 2016 statements were consistent and accurate estimates.
- The 2018 statement quoted a “much higher pay” figure, with correspondingly higher pension and lump sum amounts, so it would have been reasonable for Mrs D to question the disproportionate increase.
- Mrs D had applied for retirement before she requested the 2018 statement. Consequently, it was unlikely that the error had a major impact on her future plans.
- Mrs D opted to take the maximum lump sum based on the 2018 statement. If she wished to take the standard benefits, this could be arranged but she would have to repay part of the lump sum.
- It partly upheld Mrs D’s complaint because it had issued an incorrect estimate, but it could not honour the incorrect benefits quoted in the 2018 statement.

24. Mrs D remained dissatisfied. She maintained that:-

- During the telephone conversation on 29 October 2018, NHS Pensions had indicated that she would “definitely receive £60,363.75 as a lump sum and £754.00 per month pension.”
- She had to purchase a smaller house to reduce the monthly running costs.
- NHS Pensions did not contact her between October 2018 and January 2019 to inform her that there had been a mistake.

Adjudicator’s Opinion

25. Mrs D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS Pensions. The Adjudicator’s findings are summarised below:-

- The 2018 statement was based on incorrect information provided by the Employer and not as a result of direct maladministration by NHS Pensions.
- The 2018 statement included a caveat that the figures provided were estimates and could not be guaranteed until NHS Pensions had received Mrs D’s final pay and service details.
- While Mrs D said that she had been working additional hours to increase her pension benefits, the 2018 statement suggested that her benefits had increased by around 50%, compared to the 2010 and 2016 statements. This should have

prompted Mrs D to question the accuracy of the 2018 statement and she ought to have been reasonably aware that the figures were incorrect.

- NHS Pensions could not provide a recording of the telephone call in question. The telephone note did not support Mrs D's assertion that she queried the figures with NHS Pensions.
- Mrs D had not suffered a financial loss because she was not entitled to the overstated figures in the 2018 statement.
- It was not reasonable for Mrs D to rely on the 2018 statement because it carried a warning that the figures provided were for illustrative purposes only and NHS Pensions could not provide exact figures until it had received details of her final pay and service.
- Mrs D said that she had to purchase a smaller house because the lump sum was lower than the 2018 statement led her to believe it would be. It was not reasonable for Mrs D to enter into any financial arrangements until she had received the payment.
- Mrs D submitted her retirement application before she received the 2018 statement, so it was unlikely that the overstated figures affected her decision to retire.
- Mrs D had initially opted for the standard benefits option, but she had changed her option choice based on the incorrect figures in the 2018 statement. To remedy this, NHS Pensions had agreed that she could revert to her original option, if that was now more suitable for her.

26. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

27. Mrs D provided her further comments which do not change the outcome. Mrs D has said:-

- NHS Pensions informed her that she would receive a lump sum of £60,000.00 and she believed that the figure was correct because she had been working additional bank shifts.
- NHS Pensions should have informed her of the error when it became aware of it.
- She should receive "compensation for this inexcusable error."

28. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs D.

Ombudsman's decision

29. NHS Pensions relies on employers providing correct pay and service details to accurately calculate retirement benefits. Mrs D maintains NHS Pensions advised her

that she would “definitely” receive the figures quoted in the 2018 statement. While the call recording is not available to confirm what Mrs D was advised at the time, the telephone note of that call makes no mention of any guarantees being provided. In any case, the 2018 statement carried a clear warning that explained the figures were estimates and could not be guaranteed until NHS Pensions had received her final pay and service details. I am satisfied that NHS Pensions would not have been aware that the pensionable pay supplied by the Employer was incorrect until it began to process Mrs D’s application in November 2018.

30. I appreciate that Mrs D had to contact NHS Pensions for it to confirm that the lump sum she had received was correct and that the 2018 statement was based on incorrect information. I note that NHS Pensions received the relevant information on 18 January 2019. Even had NHS Pensions notified Mrs D of the error on that same day, it would not have changed the position that she found herself in.
31. Mrs D has not provided any evidence of financial commitments that she entered into in expectation of the higher amount and has not been able to establish that she changed her financial position in expectation of a higher lump sum. Notwithstanding this, it would not have been reasonable for her to do so because the 2018 statement made it sufficiently clear that the figures quoted were estimates so could not be guaranteed.
32. Mrs D considers that she should receive “compensation” for the error. However, as explained in the Adjudicator’s Opinion, the figures quoted in the 2018 statement were based on incorrect information provided by the Employer. Consequently, the issue that has occurred is not the result of maladministration on the part of NHS Pensions. Furthermore, the pensionable pay figure detailed in the 2018 statement, and the vastly inflated pension figures, should have alerted Mrs D to the error when she received the 2018 statement.
33. I note NHS Pensions agreed that Mrs D could revert to the standard lump sum option so that she could receive a higher annual pension if she so wished. I consider any distress or inconvenience Mrs D has suffered to be nominal. Consequently, it does not warrant an award for non-financial injustice.
34. I do not uphold Mrs D’s complaint.

Anthony Arter

Pensions Ombudsman
25 January 2021