

Ombudsman's Determination

Applicant	Mr D
Scheme	NHS Pension Scheme (the Scheme)
Respondent	Sheffield Teaching Hospitals NHS Foundation Trust (the Trust)

Outcome

1. Mr D's complaint against the Trust is partly upheld, but there is a part of the complaint I do not agree with.
2. In my opinion, the Trust are responsible for failing to declare Mr D's pensionable pay correctly to the Scheme. However, because Mr D had been made aware of their error by the Scheme, I do not consider he can show that he reasonably relied upon the accuracy of the information which the Trust provided when he decided to retire.
3. My reasons for reaching this decision are explained in more detail below.

Complaint summary

4. Mr D complains that the Trust provided NHS Pensions with an inflated pensionable pay figure for the period 1 June 2009 to 31 May 2010 which NHS Pensions used to calculate the retirement benefits available to him from the Scheme. As a consequence of the Trust's mistake, the actual pension and tax free lump sum payable to him were significantly lower than anticipated.
5. In order to put matters right, Mr D contends that he should be compensated by the Trust and receive the level of retirement benefits he was originally promised.

Background information, including submissions from the parties

6. Mr D previously brought a complaint about his incorrect benefit illustration against NHS Pensions. This was determined by the Ombudsman on 18 February 2016 (Our Ref: PO-7996). Copies of both the opinion and determination of the original complaint may be found in the Appendix. To the extent that facts were considered and findings made in the context of that complaint, they have not been reinvestigated. What has been investigated is Mr D's separate complaint about the error in the underlying information which was provided by the Trust.

Adjudicator's Opinion

7. Mr D's new complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trust. The Adjudicator's findings are summarised briefly below:

- There is no dispute that NHS Pensions issued Mr D with incorrect retirement quotations in April 2013 and May 2014.
- The errors were caused by the Trust submitting to NHS Pensions an inflated pensionable pay figure of £54,670.79 pa for the 2009/10 Scheme year which included a large amount of pay arrears for previous Scheme years that it should have disregarded.
- These mistakes represent maladministration on the part of the Trust because it was ultimately responsible for the accurate provision of salary information to NHS Pensions on which retirement benefits were based.
- Mr D decided to retire on the basis of the incorrect benefit information which NHS Pensions provided him in May 2014.
- He should reasonably have recognised that the quotations provided in May 2014 were incorrect though because the pensionable pay figure of £46,319.35 pa was significantly lower than the corresponding figure of £54,670.79 pa used to calculate his estimate retirement benefits in April 2013.
- Mr D cannot claim for a loss that he could have mitigated, whether he in fact did so or not. He should have questioned the pensionable figure used by NHS Pensions in the calculation of his retirement benefits in May 2014 with the Trust before deciding to retire.
- Mr D did not act to his financial detriment based on a reasonable belief that the figures were correct. Therefore the Trust should not compensate Mr D for any actual financial harm he has suffered as a result of the incorrect quotations.

8. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments as follows:

- NHS Pensions informed him in their letter dated 16 February 2015 that:
 - a. the Trust had been notified on 2 July 2013 that the pensionable pay figure which they had given for the period 1 June 2009 to 31 May 2010 of £55,188.81 had been used to calculate his deferred pension benefits; and
 - b. the Trust was asked to check this figure and confirm its accuracy but they failed to respond

- he had many discussions with the Trust about his pension figures but is unable to provide any documentary evidence to corroborate this;
- he had dealt with Mrs H of the Trust mainly by e-mail on this and other matters including Additional Voluntary Contributions (**AVCs**) and Pay Protection and it is disappointing that the Trust cannot find any evidence of this;
- the Trust had always informed him that the pension figures were accurate and could be relied upon;
- he could not calculate the pension figures himself because of Pay Protection, he assumed that they were correct and made his decision to retire based on the incorrect information provided;
- if he had received details of the correct lower figures, he would not have retired and continued working until he was entitled to better benefits; and
- he has two letters from Mrs H sent in 2011 concerning AVCs which proves that he had been in correspondence with her. This casts doubt on the Trust's claim that they are unable to find any relevant correspondence; the Trust's record keeping is selective.

9. The Trust says that:

- they have no record of any written correspondence between Mrs H and Mr D in their files;
- when Mrs H retired in 2013, her e-mails were deleted after six months and cannot now be retrieved;
- the only correspondence which they can find between Mr D and them (apart from the more recent letters concerning his claim for his retirement benefits) are copies of the e-mails from 2004 and 2006 regarding preservation of pay when his on-call commitment ceased;
- they have retained no record of receiving notification from the Trust on 2 July 2013; notifications of this type are generally sent electronically and would only have been available on the system for six weeks before being deleted by NHS Pensions;
- they are consequently no longer able to ascertain whether NHS Pensions sent the notification on 2 July 2013 or whether they responded to it; and
- all the pension quotations based on the higher incorrect pensionable pay figure included a disclaimer that the figures shown are estimates only and precise figures could not be provided until Mr D's final pay and service details were known and had been verified at the time of his benefit payment application

10. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr D for completeness.

Ombudsman's decision

11. Mr D considers that he should be entitled to the benefit quoted to him because the Trust was responsible for the error. However the starting point is that he is only entitled to the benefits provided by the rules of the scheme. Exceptionally, in cases where incorrect information has been given redress will be provided, if it can be shown that financial loss or non-financial injustice has flowed from reliance on that incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken, such as retiring early. They must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
12. I have considered carefully whether it was reasonable for Mr D to have accepted the May 2014 figures as correct and have concluded it was not. I accept that the calculations involved were complicated, that there were many factors which needed to be considered to get them right, and he could not be expected to understand them all. However the error in the information provided to him was not caused by those complicating factors, specifically the error was not caused by an issue to do with pay protection, but by an error in the way that his pensionable pay had been declared by his employer. The evidence shows that Mr D had knowledge of that error, was given detailed disclosure about the relevant figures, and was asked to contact his employer to correct them.
13. Mr D says that he queried the lower pensionable pay figure of £46,319.35 pa used in May 2014 by NHS Pensions to calculate the retirement benefits available to him and that he tried to check his pension quotations with the Trust. I accept that he did so. However, the Trust's records do not indicate any specific contact from Mr D about the inflated pensionable pay figure for the 2009/10 Scheme year.
14. Mr D says he corresponded regularly with a particular employee at the Trust and has produced correspondence from 2011 which demonstrates this to be so. However that correspondence does not deal with the question of his pensionable pay. The Trust say that the employee in question retired in 2013, they can trace no relevant correspondence, and her emails would have been deleted six months after her retirement. Mr D says he cannot find any additional evidence either. I conclude that Mr D cannot demonstrate on the balance of probabilities that he questioned the relevant pensionable pay figure with the Trust. I accept that he may have been confused by the number of issues involved in the calculation, and probably lost sight of the particular relevance of the 2009/10 pensionable pay figure, but I am satisfied that that particular error and the need to get it corrected was clearly explained to him by NHS Pensions.

15. It is regrettable that the Trust did not respond to NHS Pensions' request on 2 July 2013. I think it more likely than not that the request was sent and not responded to. The Trust was under an obligation to declare correct pensionable pay figures. In my view their failure to do so, even when prompted, amounts to maladministration. In my view, the discovery that his pension was to be significantly less than he expected when it was too late for him to adjust his plans would have caused Mr D some distress and inconvenience. I do not, however, consider that the non-financial injustice caused by the Trust is significant enough to warrant me awarding Mr D my minimum award of £500 for distress and inconvenience incurred.
16. It is therefore my opinion that this complaint should be partly upheld against the Trust but no award from the Trust will be necessary

Karen Johnston

Deputy Pensions Ombudsman
31 March 2017

APPENDIX

I am authorised by the Pensions Ombudsman to give opinions on the merits of cases, including whether or not they can be upheld and, if applicable, what should be done to put matters right. The letter accompanying this document explains what your options are depending on whether or not you accept my opinion; please read it carefully.

Opinion by investigator for the Pensions Ombudsman Service

Applicant	Mr Stephen Hatfield
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Pensions

Complaint summary

17. Mr Hatfield has complained that NHS Pensions, the Scheme managers, provided him with incorrect retirement estimates and his actual pension and lump sum payments were significantly lower than he expected.
18. He also says that he took advice from NHS Pensions on whether or not he should opt out of the Scheme and he subsequently did this based on their recommendation.

My opinion

19. I have looked very carefully at the case and it is my view that this complaint should not be upheld against NHS Pensions because they cannot reasonably be held responsible for Mr Hatfield receiving the incorrect estimates. In addition, there is no evidence to substantiate his claim that he was told by NHS Pensions to opt out of the Scheme.

Background

20. NHS Pensions wrote to Mr Hatfield on 22 October 2010 saying,

“I understand that you have a query with your pensionable pay as shown on ...Statement.

I have enclosed a list of the contributions you have paid up to 31/03/2010 which have been put on your record by your Finance Department, for your information.

If you have any queries regarding these figures, you should contact your Finance Department.”

21. Mr Hatfield received a retirement benefit estimate from NHS Pensions on 16 April 2013. This showed a total pensionable pay of £54,670.79. It also stated deferred pension benefits of a lump sum retiring allowance of £140,138.57 and an annual pension (reduced) of £21,020.79. The notes on the estimate said,

“This estimate is based only on the information NHS Pensions holds at this time and assumes that your total pensionable pay will remain unchanged until you retire.

If you have any queries about a period of membership or amount of pensionable pay, please contact your employer.

Your final pension benefits will be based on your confirmed membership and pensionable pay at retirement.”

22. Mr Hatfield says that the 16 April 2013 estimate was lower than his own calculations of pensionable pay which he says was £57,402.74 on which he paid full pension contributions.
23. Mr Hatfield received retirement benefit figures from NHS Pensions on 22 May 2014. This showed total pensionable pay of £46,319.95. It stated a net lump sum payable on 1 June 2014 of £123,430.88 and a pension payable from 1 June 2014 of £18,514.62 per annum.
24. Mr Hatfield says that he was subsequently informed by NHS Pensions that his lump sum would be reduced to £121,610.26 and that he would receive a reduced annual pension of £18,241.53 and the difference paid since June 2014 would be recovered from him.

25. NHS Pensions wrote to Mr Hatfield on 17 July 2014 saying,

“...It is unclear why you chose to opt out of further contributing to the Scheme ...and I can find nothing on your pension record to suggest that we did advise you to opt out of further contributing to the Scheme ...

...It is noted that we missed an opportunity to recognise the overstated pay figure within your pension record when manually calculating the pensionable pay figure used within the estimate dated 16 April 2013. Please accept my sincere apology on behalf of NHS Pensions for providing incorrect information.”

26. Mr Hatfield's complaint was considered by NHS Pensions under stages one and two of the Scheme's internal disputes resolution procedure, (**IDRP**). In their stage one IDRP response letter to Mr Hatfield of 17 October 2014, the writer of the letter said,

“...It transpired that the pay figure your employers provided to us in respect of the 2009/2010 financial year was overstated as it included arrears of pay that accrued prior to 1 April 2009. Regrettably, this did not become apparent until the processing of your pension award in June 2014-at which time your

employer confirmed the correct values of your last three years' pensionable pay.

In respect of the advice you state you received from NHS Pensions, there is a note on our records of a telephone call you made on 10 September 2012 which states that "you discussed the option of re-joining the Scheme or deferring your pension to benefit from the previous higher earnings". Our notes do not detail the content of the discussion you had therefore it is difficult to comment upon the advice you state you received."

27. Mr Hatfield wrote to NHS Pensions on 28 October 2014 in response to their letter of 17 October. He said,

"I first noticed that the pensionable pay stated in the NHS Pension Choice document was more than my salary at the time. I contacted the NHS Pension Choice Exercise to query this figure and spoke to a G Paterson who assured me that the figure was correct and it was this figure that my pension would be based on. Following this conversation, I received a letter confirming these figures, on which I paid full pension contributions.

From receiving G Paterson's letter I have regularly contacted NHS Pensions for updates on what my pension would be and questioned the figures on several occasions only to be told that the figures were correct at around 53/54K.

I also sought advice on...when would be the most advantageous time to withdraw from the scheme and to freeze/take my pension. It was on the advice given that I froze my pension in order to achieve the maximum pension under the "3 year rule".

28. In NHS Pensions' stage two IDR response letter to Mr Hatfield of 16 February 2015, the writer of the letter said,

"...Amongst the tasks undertaken by the employer is the responsibility for recording the date a Scheme member commenced pensionable contributions, their pensionable pay for the year,

...NHS Pensions does not have access to employer pensions and payroll systems and is therefore not in a position to validate any information provided. For their part the employee is responsible for checking the information provided for any inaccuracies and to liaise with their employer or NHS Pensions to resolve them.

I understand that after receiving your Choice Investment from NHS Pensions you queried the pensionable pay used in the calculation as it appeared incorrect. On reviewing the notes made of the telephone conversation you had with the NHS Pensions operative, you were invited to check the pay information with your employer. This instruction was repeated on 22 October

2010 when NHS Pensions provided you with a copy of the contributions and pay details recorded on your electronic pension record to assist with your enquiry. On reviewing your pension record I am unable to locate any further correspondence on this matter from either you or your employer.

On 19 April 2013 a further estimate was provided to you ...I am however unable to trace any correspondence querying the pensionable pay used to calculate these pension benefits.

I note that you have pointed to several conversations that you had with various members of the NHSBSA. Conversations made to the NHS Pensions helpline are recorded and retained for 6 months. However, as some time has elapsed ...I am unable to review the conversations that you had and therefore I am not in a position to comment on the information that may have been provided."

29. In an email to NHS Pensions on 23 February 2015 regarding his complaint Mr Hatfield says,

"You, by your own admission, are aware of pay arrears and should therefore have ensured that the estimates provided should have taken these into account. I was aware of this but was advised that they were included in the 3 year rule and as previously stated I knew of employees whose pensionable pay had included arrears.

...I originally contacted my employer for details of the pension I would receive but was told they were unable to give me an accurate figure because it included protected pay. I was informed that to ensure an accurate figure was given I needed to obtain an estimate from NHS Pensions. I contacted NHS Pensions for an accurate estimate which was provided.

...I requested, in several conversations, with your advisers information on how the pension was calculated, the 3 year rule and how it was applied...During these conversations I always stated my current salary and it was in one of these conversations I was advised to freeze my pension and withdraw from the scheme in order to maintain the pension at the current level...I took the advice in good faith ...and withdrew from the scheme. At a later date I enquired if I could re-join the scheme only to be told that it was pointless as I would be paying further contributions to receive a lesser pension.

My decision to retire was based on the pension figures given. Had the figures been the same as the pension I have received I would not have retired because it is not enough to satisfy my needs..."

My findings

30. Mr Hatfield contends that NHS Pensions provided incorrect estimates of his retirement benefits on more than one occasion. He says that he used these statements to plan his retirement.
31. However, I think that NHS Pensions had taken reasonable steps to notify Mr Hatfield as evidenced in their letter to him of 22 October 2010 and in their retirement benefit estimate that he received on 16 April 2013 that he should approach his employer if he had any queries regarding his Scheme membership and pensionable pay.
32. It was reasonable in my view for NHS Pensions to rely on the information they were provided by the employer being correct. I note that NHS Pensions say in their letter to Mr Hatfield of 17 July 2014 that they missed an opportunity to recognise the overstated pay figure when manually calculating his pensionable pay figure used within the estimate dated 16 April 2013. This was an oversight by NHS Pensions. However, ultimately it was the employer's responsibility to work out Mr Hatfield's pensionable pay and send the correct details to NHS Pension. So any incorrect statements that Mr Hatfield received from NHS Pensions were based on incorrect information provided by his employer. So I do not think NHS Pensions can reasonably be held responsible for the inaccurate estimates in question.
33. In any event, I do not consider that it was reasonable for Mr Hatfield to rely on the incorrect statements in the way that he asserts. This is because he was made aware in the statement of 16 April 2013 that his final benefits would be based on his confirmed membership and pensionable pay at retirement. So, he ought to have known that his benefits were not finalised at that stage and that the figures quoted were not guaranteed.
34. Further, the final pay used in the incorrect estimate of 16 April 2013 was significantly higher than the figure used to calculate his finalised benefits on 22 May 2014. It is my view that because of the stark differences in the figures that Mr Hatfield ought to have known that the estimates in question were incorrect or at least he should have questioned them with his employer as advised and not NHS Pensions.
35. I note that Mr Hatfield contends that he had sought confirmation from NHS Pensions in telephone calls about the correct figures. NHS Pensions say that there are insufficient notes to show exactly what was discussed in the alleged telephone calls in question. Whilst it is difficult to verify the exact content of the telephone calls, I take the view that he still could not turn a blind eye to the fact that the estimates were obviously wrong. He clearly had doubts about the validity of the estimates in question. From the evidence, it is my view that he should have contacted his employer to seek confirmation of the correct salary as he was advised to do so by NHS Pensions from the outset. Had he done so, then it was more likely than not that they would have confirmed the correct position prior to taking his finalised benefits.

36. I also think that it was more likely than not that he would have taken retirement irrespective of receiving the incorrect estimates. This is because the difference between the correct and incorrect retirement benefit figures was a reduction of approximately £2,700 per annum regarding his pension and approximately £18,500 in respect of his lump sum. Although these amounts were not insignificant, they were not substantial enough in my view for him to have altered his decision about taking retirement.
37. In addition, there is no evidence that Mr Hatfield had made any enquiries to see whether there was a possibility of reversing his decision after receiving the correct pension figures. So this weakens his case as it suggests that he was content to rely on the finalised figures provided. Consequently, I do not think his claim for financial loss because of detrimental reliance will succeed.
38. Mr Hatfield claims that he was advised by NHS Pensions in telephone calls with them that he should opt out of the Scheme and subsequently did this based on their recommendation. I note that NHS Pensions says that they have no recordings to show exactly what was allegedly discussed during the telephone call in question. Notwithstanding that there is no evidence to substantiate his claim, I think that it was more likely than not that Mr Hatfield was not specifically told this. This is because; NHS Pensions were the Scheme administrator and their role would not extend to the provision of such advice. Further, Mr Hatfield did not receive any subsequent written correspondence from NHS Pensions confirming this. Without any further evidence in support of his claim I do not consider that there are sufficient grounds to make a finding in favour of Mr Hatfield in this regard.
39. Mr Hatfield can only receive the retirement benefits to which he is entitled under the Scheme rules. There is no evidence to show that Mr Hatfield's finalised benefits are incorrect. The fact that he received the incorrect pension figures does not confer on him the rights to those incorrectly stated benefits.
40. Mr Hatfield says that his complaint is solely against NHS Pensions. Following on from the above, I do not think that his complaint against NHS Pensions can be upheld.

Ken Buckley

Senior Investigator
18 December 2015

Ombudsman's Determination

Applicant	Mr Stephen Hatfield
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Pensions

Complaint Summary

41. Mr Hatfield has complained that NHS Pensions, the Scheme managers, provided him with incorrect retirement estimates and his actual pension and lump sum payments were significantly lower than he expected.
42. He also says that he took advice from NHS Pensions on whether or not he should opt out of the Scheme and he subsequently did this based on their recommendation.

The Ombudsman's determination and reasons

43. My decision is that this complaint should not be upheld against NHS Pensions.
44. My reasons are essentially the same as in Ken Buckley's Opinion of 18 December 2015, (**the Opinion**), a copy of which is attached. My additional comments are set out below.
45. Mr Hatfield contends that in all of his conversations with NHS Pensions he asked them to confirm his pension entitlement and was always assured that the figures given were correct. He says that NHS Pensions, by their own admission, were aware of a large increase in his pay between 2009 and 2010, yet not only did they not query this with his employer they confirmed to him that the figure was accurate.
46. However, I note that in NHS Pensions' letters to Mr Hatfield of 22 October 2010 and 16 April 2013, they made it clear that if he had any queries regarding his Scheme benefits that he should raise it with his employer. As explained by Mr Buckley in the Opinion, Mr Hatfield's employer was ultimately responsible for the accurate provision of salary information to NHS Pensions on which retirement estimates were based. NHS Pensions were responsible for ensuring, based on the information they received from Mr Hatfield's employer, that their subsequent calculations were accurate. I therefore do not find that NHS Pensions were at fault in Mr Hatfield receiving the incorrect estimate in question.
47. I note that Mr Hatfield asserts, in one of his telephone calls to NHS Pensions, that he had a conversation about the 3 year rule and that he then worked out the most financially advantageous time to withdraw from the Scheme. I agree with Mr Buckley's comments in the Opinion, that NHS Pensions could not legally provide such advice and that there was nothing to show that they actually did provide such advice. In addition, I do not consider Mr Hatfield was misinformed by NHS Pensions

in withdrawing from the Scheme in the way he asserts, as his comments indicate that he had carefully considered the matter following the discussion with NHS Pensions and made his own independent decision.

48. Mr Hatfield says that he had left employment prior to receiving his actual retirement figures as he expected his actual pension to be in line with the incorrect estimate of 16 April 2013. He assumed the finalised figures were wrong and that a mistake had been made in the calculation. However, for the reasons given by Mr Buckley in the Opinion, I do not think that it was reasonable for Mr Hatfield to have relied on the incorrect estimate in the way that he suggests.
49. For the reasons I have given above I do not uphold Mr Hatfield's complaint.

Anthony Arter

Pensions Ombudsman
18 February 2016