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Ombudsman's Determination

Applicant	Miss Malkit Khatra
Scheme	NHS Pension Scheme (the Scheme)
Respondent(s)	Central and North West London NHS Foundation Trust (CNWL) and NHS Pensions

Complaint summary

Miss Khatra has complained that she should receive compensation for a loss of income connected to:

- maladministration of her added years contributions;
- receipt of an incorrect estimate of retirement benefits upon which she based her decision to retire; and
- a delay in paying her benefits.

Summary of the Ombudsman's determination and reasons

The complaint should be partly upheld against CNWL, to the extent that they compensate Miss Khatra for the distress and inconvenience caused by their maladministration.

CNWL:

- deducted added years contributions without a valid contract;
- recorded the additional contributions incorrectly, thereby causing NHS Pensions to issue an incorrect benefit estimate; and
- gave NHS Pension the wrong leaving date, which caused a delay in the payment of Miss Khatra's benefits.

The complaint is only partially upheld because it was unreasonable of Miss Khatra to have relied on the incorrect benefit estimate.

Material Facts

1. Miss Khatra had two periods of pensionable employment within the NHS - 7 April 1995 to 15 November 1998, and 13 May 2002 until 28 February 2013.
 2. From 18 December 1996 (at the age of 39), Miss Khatra elected to purchase 9 years and 140 days extra membership at the cost of 9% of her monthly salary, until age 60. At the time, she was working at St Vincent's Orthopaedic Hospital but her employment contract was with Hillingdon Hospital (**Hillingdon**).
 3. Miss Khatra resigned from St Vincent's Orthopaedic Hospital in 1998, and so did not complete the full purchase of added years; she had accrued 184 days from her additional contributions.
 4. When Miss Khatra returned to Hillingdon's employment in 2002,, Hillingdon incorrectly deducted added years contributions in line with the original contract. Had Mrs Khatra wished to continue to pay added years, the proper procedure would have been to take out a new contract.
 5. On 16 October 2010, Miss Khatra received a "choice statement", which contained an illustration of benefits at 55 and at 60:
 - At age 55 it was estimated that Miss Khatra would be entitled to a pension of £7,472 and a lump sum of £22,417, or a reduced pension of £6,005 and an enhanced lump sum of £40,030.
 - At age 60 it was estimated that Miss Khatra would be entitled to a pension of £8,799 and a lump sum of £26,396, or a reduced pension of £7,070 and an enhanced pension of £47,136.
- The Choice Statement also said that Miss Khatra had accrued an added year's credit of 184 days.
6. In February 2012 Hillingdon became part of CNWL and CNWL became responsible for Hillingdon's staff and administrative function.
 7. On 16 July 2012, Miss Khatra wrote to NHS Pensions. She asked if the 16 October forecast figures were based on her actual part time hours and if not, she required a pension forecast based on her current salary to age 55 (December 2012).
 8. On 23 July 2012, NHS Pensions sent Miss Khatra an estimate of projected benefits to 31 March 2012. The estimate quoted an annual pension of £11,876.51 and a lump sum of £35,629.55, or a pension of £9,543.62, with an enhanced lump sum of £63,624.17. Mrs Khatra says she did not receive this estimate.
 9. On 22 October 2012, NHS Pensions produced an estimate of benefits to 28 February 2013. Miss Khatra's estimated entitlement was an annual pension of £16,270.58 and a lump sum of £48,916.91, or a pension of £13,080.20, with an enhanced lump sum of £87,201.30.

10. CNWL wrote to Miss Khatra on 23 October 2012:

“...in reference to your membership of the NHS Pension Scheme as I have received details of your request to retire on age retirement grounds on 28 February 2013.”

The letter enclosed an estimate of benefits to 28 February 2013 (presumably the statement produced by NHS Pensions on 22 October 2012), and an AW8 Retirement Benefits Claim Form.

11. Miss Khatra completed the employee's sections of the AW8 on 1 November 2012 (parts 7 to 14); she elected to receive the maximum lump sum. The other sections were completed by Miss Khatra's employer. In part one of the form CNWL were required to put down Miss Khatra's last day of membership – this was stated as 28 February 2013.
12. In December 2012, Miss Khatra says that she emailed two people from CNWL's pensions department about the disparity in the pension amounts she had been quoted at different times but she did not receive a response.
13. CNWL submitted Miss Khatra's retirement application to NHS Pensions on 19 December 2012. As per procedure, the information was sent electronically and a print out of the information (supplied by NHS Pensions), shows that Miss Khatra's last day of scheme membership was given as 31 March 2013.
14. In January 2013, Miss Khatra says she spoke to a named CNWL member of staff, further to her unanswered December emails and she was reassured about the estimates she received.
15. On 18 February 2013, NHS Pensions wrote to Miss Khatra following receipt of her application for retirement benefits. The letter enclosed a benefit statement, which said that from 1 April 2013, Miss Khatra would be entitled to an annual pension of £13,111.23 and a lump sum of £87,408.17.
16. On 19 February 2013, CNWL sent an email to NHS Pensions saying that Ms Khatra had informed them that her last day was to change from 31 March 2013 to 28 February 2013. This was followed up by a “post award revised details form”, which NHS Pensions received on 21 February 2013.
17. It was at this point that NHS Pensions say they noticed that there had been ineligible added years contributions deducted from Miss Khatra's salary, from May 2002. During further contact (telephone and email) between Miss Khatra and NHS Pensions it was noted that:
- Miss Khatra's pensionable pay figure had previously been incorrect, which had caused her benefits to be overstated.
 - When Miss Khatra left employment in 1998, her added year's contract should have ceased (with 184 days membership accrued).

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- NHS Pensions were prepared to offer Miss Khatra the choice of converting her contributions to pension and lump sum or a refund of her contributions - Miss Khatra chose to receive a refund.
18. On 22 March 2013, NHS Pensions sent an email, which said that Miss Khatra's revised benefits were a pension of £6,680.99 per annum with a lump sum of £44,504.03.
 19. On 22 March 2013, NHS Pensions sent a second email explaining that Miss Khatra's revised pension was actually £5,302.47 per annum with a £35,349.86 lump sum but with a cost of living increase (presumably due at the start of the financial year in April) which would rise to £6,680.99 per annum with a lump sum of £44,504.03.
 20. On 25 March 2013, NHS Pensions wrote to Miss Khatra to officially notify her that her revised benefits were a pension of £5,302.47 per annum and a lump sum of £35,349.86.
 21. Following a request from my service, NHS Pensions provided an extract of Miss Khatra's membership records for the period in question. The extract (a screen print) shows that AVC contributions were not recorded as a separate item during the period from 1996 to 1998, but were recorded separately from 13 May 2002 onwards.

Summary of Miss Khatra's position

22. She decided to retire based on the estimate she received in October 2012, which said she would be entitled to an annual pension of approximately £13,080.20 and a lump sum of £87,201.30 (after maximum commutation). But when she eventually received her benefits, she was only entitled to a pension of £5,302.47 per annum and a lump sum of £35,349.86.
23. She has suffered a substantial reduction to her income. She would never have retired on a pension that was insufficient to support her means - she would have continued working instead. She was entitled to accurate figures and she feels she has lost the opportunity to make an informed decision.
24. When she returned to NHS Employment in 2002 she was told that the contributions could be collected and she did not need to take out a new contract.
25. She did not receive the pension estimate which NHS Pensions say they sent out in July 2012. She chased this request after the summer holiday period, which resulted in her receiving an estimate in October 2012.
26. After carefully considering her options she chose 28 February 2013, as her retirement date. There was no change of retirement date it was always 28 February 2013, as can be seen from the date on her AW8 form.
27. She noticed that the October 2012, estimates showed an increase in her entitlement compared to previous estimates and so, in December 2012, she emailed two staff members from CNWL's Pensions department.

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28. She did not get a response to her emails so she telephoned the Pension Department in January 2013, and was reassured of her entitlement. The person she spoke to said "These are the figures you should go by."
29. Her lump sum and first pension payment should have been paid on 8 March 2013. When, by 20 March 2013, she had not received payment, she telephoned NHS Pensions and it was only then that she became aware of the problem.
30. She then liaised by email with NHS Pensions but it took many emails before her pension finally came into payment on 27 March 2013. Her AVC fund was not returned to her until late April 2013. This is an unacceptable delay.

Summary of CNWL's position

28. It is unfair that they are potentially to be held to account for this matter, instead of NHS Pensions. At no time did NHS Pensions inform them that the contributions should cease, due to there being no contract in place. And despite the absence of a contract, NHS Pensions accepted the contributions every month. NHS Pensions failed to conduct the proper checks as to why they were receiving the contributions.
29. Hillingdon became part of CNWL on 1 February 2012. The transfer of staff was made electronically i.e. Miss Khatra was paid up until 31 January 2012, by Hillingdon and as of the next day all of her records, payments and deductions appeared as a CNWL employee. In Miss Khatra's case AVC deductions made by Hillingdon would have continued under CNWL. A thousand members of staff including Miss Khatra transferred to CNWL and it would not have been possible to go through every single member of staff's paper files and check that the deductions were correct.
30. From February 2012, every month up until Miss Khatra left employment, they informed NHS Pensions of Miss Khatra's AVC contributions and the employer pension contributions pension separately. There was is no area for confusion – Hillingdon would have also informed NHS Pensions in the same manner.
31. They also sent cyclic updates at the end of each financial year, via the pensions-online system. Each update would have shown a breakdown of contributions, with AVC contributions as a separate item.
32. Miss Khatra gave the Pensions Department an estimated leaving date of 31 March 2013. Then, on receiving NHS Pensions letter of 18 February 2013 (containing a pension start date of 1 April), Miss Khatra contacted them to say that that her leaving date was in fact 28 February 2013. Hence, they contacted NHS Pensions to make the change.
33. CNWL obtain pension estimates from the NHS Pensions, based on data held by them. As they had no information about the AVC contract not actually existing, then Miss Khatra's retirement estimates would obviously be incorrect. This error by the NHS Pensions is the major factor in Miss Khatra's complaint, not the fact that they provided an estimate based on a leaving date of the 31 March 2013 instead of the 28 February 2013.

34. Of the two members of staff Miss Khatra named as providing her with incorrect information, one of them took retirement two years ago and the other can only remember changing the leaving date for Miss Khatra.
35. The delay in Miss Khatra receiving her pension is again down to NHS Pensions. NHS Pensions only informed them that there was no contract in April 2013. Upon being informed of the situation, they provided a refund to Miss Khatra within the same month.

Summary of NHS Pensions' position

31. Miss Khatra's pension was overstated due to an incorrect whole time pensionable pay figure of £57,701.59, having been used to calculate benefits for the period of membership ending in 1998.
32. From 1996 to 1998 Hillingdon failed to ring-fence Miss Khatra's additional contributions. Hence, they were not recorded as added years, and were incorrectly included with Miss Khatra's standard pension contributions. This caused the pensionable pay figure to become inflated.
33. On returning to NHS Employment in May 2002, Miss Khatra instructed her employer to deduct contributions in respect of the added year's contract, which was taken out in 1996. However, NHS Pensions were unaware of this instruction and did not confirm to her employer that the contributions towards the purchase of added years could recommence.
34. On request they issued Miss Khatra with an estimate of her pension benefits on 23 July 2012. Even though Miss Khatra says she did not receive this estimate they have no record of her contacting them to chase her request. The 23 July 2012, estimate was substantially lower than the later estimate in October 2012, yet Miss Khatra did not question the difference.
35. The figures supplied to Miss Khatra in the 16 June 2010 'Choice Statement' against the amounts provided in her award notification, showed an increase of 118% in a little under three years. It is therefore not unreasonable to suggest Ms Khatra should have queried the difference.
36. The Choice Statement also showed that she had been credited with 184 days' worth of added years (the amount accrued up until 1998). As the contributions had continued to be deducted they believe Miss Khatra should have queried why the figure had not increased.
37. They received Miss Khatra's completed AW8 form electronically on 19 December 2012. But they were not made aware that Miss Khatra had changed her last day of service from 31 March 2013 to 28 February 2013, until 21 February 2013.

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38. On recalculating Miss Khatra's benefits in response to the change in leaving date, they noticed that pensionable pay used to preserve the earlier period of service seemed high when compared to final pensionable pay. This triggered an investigation, which in turn led to them discovering the unauthorised added years deductions.

Conclusions

Maladministration of added years contributions

39. NHS Pensions blame the actions of Hillingdon and later CNWL, for failing to record the contributions correctly, and then for deducting added years contributions without a valid contract, but CNWL do not accept this. CNWL say that the contributions were recorded separately, and they had simply continued to deduct contributions as Hillingdon had previously done. They also say that NHS Pensions should have informed them that no contract existed.
40. The evidence suggests that Hillingdon failed to record the additional contributions separately from 1996 to 1998. But when Miss Khatra returned to work in 2002, Hillingdon notified NHS Pensions of the AVCs, as a separate item. Nevertheless, Hillingdon made a mistake when they agreed to collect AVCs, without insisting that Miss Khatra should take out a new contract.
41. Whilst I understand that it may have been impractical for CNWL to check the records of each employee who transferred from Hillingdon, since CNWL inherited the functions and staff of Hillingdon, they are responsible for Hillingdon's actions.
42. NHS Pensions do not have access to employee records and are reliant on information supplied by employers. Hence, it is reasonable that they were initially unaware that AVC contributions had been made from 1996 to 1998. Also, although the additional contributions were recorded separately from 2002 onwards, NHS Pension would not have known that CNWL were collecting contributions in relation to an expired contract. Hence, I consider that that CNWL are responsible for the cause of this complaint.

43. .

Incorrect estimate of retirement benefits

44. Due to the incorrect pensionable pay figure, NHS Pensions produced an inflated pension estimate, upon which Miss Khatra says she based her decision to retire. Nonetheless, since NHS Pensions were not responsible for the pensionable pay figure being incorrect, I do not find that they were at fault for producing an inflated estimate. The fault lies with CNWL.
45. However, where misinformation is provided, I only award compensation for reduction in expected income under certain circumstances. One of my requirements is that there must be no suggestion that the member concerned knew, or should have

known, that an error had occurred. Miss Khatra should have noticed that she had received an inflated benefit estimate compared with previous estimates.

46. On 16 October 2010, Miss Khatra received a choice statement containing estimates of benefits, which were significantly lower than the estimate she received in October 2012. I realise that this was two years before she applied for her benefits but since she mentioned the 16 October correspondence in her subsequent letter of 16 July 2012, it is clear she had the documentation to hand. It was, therefore, unreasonable of Miss Khatra to have relied on the October 2012 estimate.
47. I note that Miss Khatra says she contacted CNWL's Pension department to question the differences in the estimates, during which, she feels, she was given incorrect information. However, there is no record of the conversations and CNWL do not support Miss Khatra's version of events. Due to the lack of evidence I do not take a view on whether Miss Khatra was given misinformation by CNWL.
48. In any event, Miss Khatra says that she contacted CNWL in December 2012 and in January 2013, after she had already submitted her November pension application. Also, as NHS Pensions produced the estimates she should have spoken directly to NHS Pensions and not with her employer. CNWL would not have been able to explain why the estimates were different without making enquires with NHS Pensions, and NHS Pensions have no record of any such enquiry.

Delay in paying benefits

49. Miss Khatra says that she should have received her first pension payment on 8 March 2013, but it was not paid to her until 27 March 2013.
50. When the handwritten version of the AW8 retirement application was completed Miss Khatra's last day of membership was stated to be 28 February 2012. CNWL also wrote to Miss Khatra on 23 October 2012, acknowledging her "...request to retire on age retirement grounds on 28 February 2013." But when the AW8 information was submitted electronically from CNWL to NHS Pensions, last day of employment was stated as 31 March 2013.
51. The AW8 was submitted in 19 December 2012, in anticipation of Miss Khatra's pension coming into payment on 1 April 2013. After receiving the application, NHS Pensions authorised the payment of benefits on 18 February 2013. But when CNWL informed them of a change in leaving date matters were delayed; because NHS Pensions discovered the discrepancy and there was insufficient time for them to re-process the application in time for 28 February 2013. NHS Pensions eventually recalculated the award on 25 March 2013, after several phone calls and emails with Miss Khatra.
52. NHS Pensions were not to blame for the delay in Miss Khatra's benefits coming into payment. Once they received the post award revised details form they acted on it in a little over a month, which is not an unreasonable period of time; especially given the

complications of separating the unauthorised additional contributions from Miss Khatra's ordinary contributions.

53. I am aware that Miss Khatra also complains that she did not receive the refund of her additional contributions until April 2013, but this is a separate matter. NHS Pensions were not obliged to provide them at the same time as her pension benefits. In any case, the additional contributions were refunded in good time, bearing in mind that Miss Khatra only took the decision to accept a refund in March 2013.
54. Contrary to information provided by Miss Khatra, CNWL maintain that she told them her leaving date was 31 March 2013. However, based on the handwritten version of the AW8 and CNWL's letter of 23 October 2012, I think it more likely that CNWL accidentally keyed in the wrong date when the AW8 information was sent to NHS Pensions. Had CNWL given the correct date Miss Khatra may have received her benefits on time and she would not have had to go to the trouble of liaising with NHS Pensions during an obviously stressful period.
55. In summary, Miss Khatra is only entitled to her correct benefits from the Scheme. It is inappropriate to determine that Miss Khatra should receive compensation for the reduction in her expected income, because it was unreasonable of her to have relied on the October 2012 estimate, and she has not been disadvantaged by having paid AVCs. When NHS Pensions discovered the error, they offered Miss Khatra a fair choice in terms of how the additional contributions could be treated. However, CNWL's maladministration concerning their deducting added years contributions without a valid contract, failure to record the contributions correctly and miscommunication of Miss Khatra's last day of pensionable service, caused unnecessary distress and inconvenience, for which Miss Khatra should receive compensation, as provided for below.

56.

Directions

Within 28 days of the date of this determination CNWL shall pay Miss Khatra £500 for the significant distress and inconvenience she has suffered.

Anthony Arter

Pensions Ombudsman
7 September 2015