

Ombudsman's Determination

Applicant	Mrs H
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA) Winchmore Hill Medical Practice (Winchmore Hill Practice)

Outcome

1. Mrs H's complaint against NHS BSA and Winchmore Hill Practice is partly upheld. To put matters right, for the part that is upheld, NHS BSA and Winchmore Hill Practice shall pay Mrs H a distress and inconvenience award in recognition of the non-financial injustice she has sustained.

Complaint summary

2. Mrs H's complaint concerns an overpayment of pension benefits that NHS BSA is seeking to recover by way of repayment. In particular:-
 - NHS BSA initially claimed that her pension benefits had been overpaid by £940.89. It subsequently advised that the amount payable was £343.93.
 - Winchmore Hill Practice should revise its calculations of her pensionable pay, so that it is consistent with the pensionable pay used in the calculation of the pension benefits that have allegedly been overpaid.
 - The administrative errors Winchmore Hill Practice made in connection with her case amount to a breach of its duty of care and "Employer Obligations", as defined in the "Employers Charter". NHS BSA has failed to hold Winchmore Hill Practice responsible for those breaches.

Background information, including submissions from the parties

3. Mrs H was employed by Park Lodge Medical Centre (**Park Lodge**) and was an active member of the 1995 Section of the Scheme.
4. In April 2017, Winchmore Hill Practice took over Park Lodge. Park Lodge subsequently relocated to the Winchmore Hill site in October 2017.

5. Mrs H has explained that she was contracted to work 24 hours per week at Winchmore Hill Practice; she worked 25 hours per week at Park Lodge.
6. On 8 November 2017, Mrs H gave the Practice Manager notice of her intention to leave employment and take “Age Retirement” from the Scheme in January 2018.
7. On 23 January 2018, Winchmore Hill Practice submitted Mrs H’s AW8 retirement application (**AW8**) form to NHS BSA.
8. On 29 January 2018, Mrs H was sent an illustration of her retirement benefits. She subsequently received her retirement lump sum and the first instalment of pension on 2 February 2018.
9. Following the merger of the two medical practices, Winchmore Hill Practice engaged a third party that provides consultancy services to GP practices to conduct a review of its payroll/pension processes (the **Review**).
10. Mrs H’s representative (the **Representative**) is a director of ISM Pension Services Limited (**ISM**). ISM was initially engaged by the third party in connection with the Review.
11. On 20 February 2018, the Representative said that ISM discovered Mrs H’s pension benefits had been understated by approximately 45%. The Representative also said that Mrs H’s notional whole time equivalent (**WTE**) total pensionable pay was “grossly inaccurate.” However, it passed NHS BSA’s validation process.
12. NHS BSA explained that Mrs H was working in a part time position. Consequently, Winchmore Hill Practice was required under Regulation U3 of The National Health Service Pension Scheme Regulations 1995 (the **1995 Regulations**), to use Mrs H’s notional WTE total pensionable pay for pension purposes. NHS BSA also explained that, due to an administrative error, the figure notified as the part time total pensionable pay was the same as that notified as the WTE total pensionable pay.
13. Regulation U3 of the 1995 Regulations is set out in the Appendix.
14. On 22 March 2018, the third party wrote to Winchmore Hill Practice. It indicated that they had discussed how Winchmore Hill Practice would “go about complying with its statutory duties under the NHS Pensions Employer’s Charter”. It referred to issues Winchmore Hill Practice had inherited when it took over responsibility for staff at Park Lodge. It also referred to similar issues within the Winchmore Hill Practice that required “rectification”, including the inconsistent treatment of overtime pay.
15. Winchmore Hill Practice ended the investigation of its processes before the Review was completed.

16. On 20 June 2018, Winchmore Hill Practice submitted a AW171 form to NHS BSA. It indicated that Mrs H had a revised notional WTE pensionable pay of £19,216 in respect of the "middle year". It also indicated that this was her highest salary.
17. On 6 August 2018, NHS BSA notified Mrs H that her retirement benefits had been revised because of a change in her pensionable pay. Mrs H was issued with a statement showing her revised award. It showed a retirement lump sum of £9,498 and pension of £3,166 per annum payable from 10 January 2018.
18. On 9 August 2018, Mrs H received payment of the arrears, plus interest.
19. On 6 September 2018, Winchmore Hill Practice wrote to Mrs H. It advised that it had attached documents used in the calculation of her pension in respect of the period 2015-2018. It highlighted that on 31 May 2018, they had discussed that historically her overtime rate differed when compared with her base salary. It said NHS BSA had advised "that if the overtime rate was "different" it was not pensionable.
20. Winchmore Hill Practice also said that its Practice Manager had made a payment to Mrs H for overtime in September 2017, this had been added to her pension as discussed at their recent meeting. It highlighted that it had informed Mrs H that it was not aware whether there were any errors in respect of previous years. It said these would have been the responsibility of the previous partnership and was being investigated. It also said it was happy to submit the information available to Winchmore Hill Practice. However, it advised that if further errors were later identified it would also need to address these. It highlighted that Mrs H had informed Winchmore Hill Practice that she wanted it to submit the available data.
21. On 12 November 2018, the Practice Manager emailed the accountants acting for Winchmore Hill Practice. She stated that she had attached a copy of Mrs H's original AW8 form and the AW171 form that had been submitted because Mrs H's retirement date was incorrect. She advised that she was also attaching the payroll information.
22. The Practice Manager explained that the employee, who had submitted the original AW8 form, had used a WTE of 37.5 hours; she stated that this was being queried. The Practice Manager asked for guidance in connection with the matter.
23. On 27 November 2018, Mrs H complained to NHS BSA concerning the information that Winchmore Hill Practice had submitted.
24. On 28 November 2018, Winchmore Hill Practice emailed its accountants. It explained that when it took over Park Lodge, it had identified that "overtime was not consistently pensioned" for staff working less than the full-time hours. It said that it had also identified that, in cases where there had been an increase in the rate of basic pay, the increase was not reflected in the rate payable for overtime. It said that when it contacted NHS BSA, it was informed that where basic pay and overtime pay rates differed overtime was not pensionable.

25. Winchmore Hill Practice acknowledged that it had initially used an incorrect total pensionable pay and that the notional WTE total pensionable pay submitted was also incorrect. Also, Mrs H's pensionable service had been understated because her annual leave had not been taken into account. It asked the accountants whether the information could be reviewed, as it wanted to ensure Mrs H received the correct pension entitlement.
26. On 8 January 2019, NHS BSA replied to Mrs H's letter of 27 November 2018. It explained that it had been notified of a revised date of leaving service and revised total pensionable pay on 26 June 2018.
27. On 26 February 2019, NHS BSA acknowledged that it had failed to identify that the notional WTE salary figure should be higher than the actual total pensionable pay figure stated on the AW8 form. This was following an email from the Representative.
28. NHS BSA confirmed that Mrs H's revised lump sum and pension had been calculated based on the revised figures on the AW171 form, using the higher notional WTE total pensionable pay notified by Winchmore Hill Practice.
29. On 11 March 2019, Winchmore Hill Practice submitted a further revised AW171. It indicated that Mrs H's WTE hours had changed to 37.5 hours.
30. On 18 April 2019, Winchmore Hill Practice wrote to Mrs H. It said that it had reviewed the figures again and acknowledged that there were errors in the AW171 form. Briefly, it stated:-
 - It had previously informed Mrs H that it had sent all the figures and spreadsheets to NHS BSA: NHS BSA had been asked to review the information. It had also asked its accountants to review the information and had attached the figures it had provided in connection with this.
 - When Mrs H was working at Park Lodge, her notional WTE hours had amounted to 36 hours. Staff at Park Lodge were on "very different" salary scales to the Winchmore Hill staff.
 - Winchmore Hill Practice informed NHS BSA that Mrs H's WTE changed to 37.5 hours in April 2017. However, it did not ask Mrs H to sign an amendment to her contract. It would be happy to change her WTE to 36 hours.
31. On 17 July 2019, NHS BSA asked Winchmore Hill Practice to confirm the date Mrs H's standard hours changed. It explained that the pension record must mirror the contract/terms and conditions of employment. It indicated that the data submitted for September 2017, would need to be corrected and any non-pensionable income deducted.
32. On 23 August 2019, Winchmore Hill Practice submitted a revised AW171 form. It advised that it had corrected "the sept 2017 payment". It stated that Mrs H's WTE standard hours had changed to 36 hours. It also stated that Mrs H's revised notional

WTE, in respect of the “middle year”, was her highest salary and amounted to £18,063.

33. During the period that followed, the Representative complained to NHS BSA on behalf of Mrs H. He asserted that there had been several breaches of the “Employers Charter”.
34. On 18 December 2019, NHS BSA wrote to Mrs H. It confirmed that her retirement benefits had been revised because of a change in her pensionable pay. It said that she was entitled to a pension of £2,976 per annum and a retirement lump sum of £8,928, payable from 10 January 2018. NHS BSA said that it had used a pay figure of £18,063 in its calculations.
35. In a separate letter, NHS BSA notified Mrs H that her pension would amount to £3,138 per annum from 8 April 2019. NHS BSA said that Mrs H had been overpaid by £343 (net) in respect of the period 4 January 2018 to 13 December 2019. NHS BSA also said that her retirement lump sum had been overpaid by £14 and that the total overpayment amounted to £926.
36. On 11 February 2020, NHS BSA notified Mrs H that £343 was outstanding in respect of the overpayment. It asked Mrs H to make payment within 14 days of the date of the letter. Alternatively, to contact its Account Receivable Team to discuss repayment options. It subsequently sent a follow up letter on 26 February 2020, demanding settlement of £343.
37. On 26 June 2020, Mrs H referred her complaint to The Pensions Ombudsman (**TPO**) for an independent review.
38. In October 2020, TPO requested NHS BSA’s formal response to Mrs H’s complaint. This was subsequently received on 31 December 2020.

The Representative’s submissions on Mrs H's behalf:-

The complaint against NHS BSA

39. The Representative said that there has been a failure on the part of NHS BSA to hold Winchmore Hill Practice responsible for breaches of the Employers Charter. NHS BSA must undertake an urgent review of the retirement application process. Furthermore, NHS BSA should not have contacted Mrs H to pursue the overpayment since this was being challenged.

The complaint against Winchmore Hill Practice

40. The Representative advised that he has over 40 years’ experience administering the Scheme. He considers this to be the worst case of professional neglect and failure of duty of care on the part of an employer. In his view, Winchmore Hill Practice’s conduct amount to a breach of “Employer Obligations”, as defined in its “Charter”.
41. The Representative emphasised that Mrs H initiated the retirement process in November 2017 and had a reasonable expectation that her retirement benefits would

be accurate and paid promptly. He also emphasised that Winchmore Hill Practice made eight amendments over a two-year period. Also, Winchmore Hill Practice did not highlight that the revised AW171 form was urgent. Consequently, Mrs H's retirement benefits were not corrected; she was overpaid as a result.

42. The Representative argued that Mrs H's case should be independently reviewed. During the initial review of the retirement application, overtime was considered pensionable. Winchmore Hill Practice has no documentary evidence to support the change in its treatment of overtime payments.
43. The Representative said that Winchmore Hill Practice stated that the figures had been checked by its accountants and that it was unable to make any further amendments. It refused to provide details of the calculations that have resulted in the alleged overpayment. Furthermore, arrears of pension contributions have not been fully refunded.
44. The Representative asserted that Winchmore Hill Practice "froze" the hourly rate for "Excess Hours Payments" at a lower rate than Mrs H's basic pay. He considers this to be a contributory factor in the overpayment. In his view, there is no documentary evidence to support this change to Mrs H's contract of employment.
45. The Representative said that Winchmore Hill Practice refused to consider Mrs H's case under its grievance procedures because she was no longer an employee. It also refused to engage in any telephone conversations or participate in meetings to discuss Mrs H's case.
46. The Representative maintains that Mrs H has suffered significant distress as a direct consequence of the maladministration on the part of her employer. In the absence of any amendment(s) to her contract of employment, Winchmore Hill Practice should revise its calculations "in support of the Pensionable Pay that has resulted in the alleged overpayment." It should also pay a distress and inconvenience award in recognition of the non-financial injustice it has caused Mrs H.

47. NHS BSA's position:-

- The process for submitting revised data, in respect of a retirement benefit claim form, has now been automated. Consequently, the AW171 form is no longer required. Any changes submitted via the "Change of employment details form", that are likely to affect a member's benefits, will automatically trigger a task for NHS BSA to review the retirement award.
- NHS BSA acknowledged that it should have verified Mrs H's notional WTE total pensionable pay. It has reminded its administrators that it is necessary to check that the employee's pay is consistent with the pay notified in the annual updates.
- The Scheme Regulations do not require NHS BSA to check that pensionable pay meets the national minimum wage requirements. NHS BSA does not propose to implement this as an additional check.

- In this case, the administration arrangements for the Scheme are shared between NHS BSA and Winchmore Hill Practice's payroll/pension department. Winchmore Hill Practice is responsible for recording, and submitting to NHS BSA electronically, the date a member commences and ceases pensionable employment and their pensionable pay for the year. Also, any changes to contracted hours from part-time to whole-time.
- Under Regulation U3 of the 1995 Regulations, the NHS employer is required to submit any revision to information previously submitted within one month. Mrs H may wish to contact Winchmore Hill Practice concerning the delays in submitting the AW171 form to NHS BSA.
- NHS BSA compiles and maintains a membership history from the data submitted by employers. This forms the basis of any benefit calculations NHS BSA undertakes in respect of the member. NHS BSA does not have direct access to pensions and payroll systems held by an employer. Consequently, it is not able to validate the information provided.
- NHS BSA's "Stakeholder Engagement" team discovered that Mrs H had disputed the information provided in the AW171 form. In response, Winchmore Hill Practice submitted "multiple change forms." The second AW171 form was submitted after a period of 18 months. According to its records, eight amendments in total were submitted over a two-year period. Mrs H should raise this with Winchmore Hill Practice.
- Winchmore Hill Practice informed NHS BSA that Mrs H's pension record was created and updated by the previous practice owners and that it was finding it difficult to administer her record. NHS BSA provided advice to Winchmore Hill Practice on whether overtime was pensionable. Also, the standard hours that should be recorded, and how to calculate notional WTE total pensionable pay.
- The role of the employer under the Employer's Charter forms "their legal requirement rather than a contractual requirement". The Regulations that govern the Scheme only permits punitive measures in cases where an employer fails to pay the monthly contributions on time.
- When NHS BSA calculates a revised award of retirement benefits, a letter detailing any overpayment is automatically generated by NHS BSA. Recovery of the overpayment was put on hold pending the outcome of the investigation into Mrs H's complaint.

48. **Winchmore Hill Practice's position:-**

- Winchmore Hill Practice was asked by Park Lodge and the local Clinical Commissioning Group (**CCG**) to provide support following a partnership dispute and a poor Care Quality Commission (**CQC**) inspection. As part of this process, the partners of Park Lodge stepped down and the partners of Winchmore Hill Practice took over the contract.

- Winchmore Hill Practice identified issues relating to payroll and pension practices at Park Lodge. This was highlighted to the CCG and the original partners at Park Lodge, and they instructed the third party to review the documents. The original partners then declined to continue with the services of the third party. Winchmore Hill Practice acknowledged that errors were made during the submission of Mrs H's AW8 form. It had a duty as an employer to support Mrs H during the retirement process and was aware of its responsibilities in this matter. It has apologised to Mrs H for the errors made.
- It maintained open communications and arranged face to face meetings with Mrs H. It also communicated by email on a regular basis. It had very "open and transparent discussions" with Mrs H on 16 April and 31 May 2018. It explained that historic issues relating to Park Lodge had not been fully reviewed and that this was the responsibility of the previous partners.
- It also explained that it was happy to correct any errors identified to date and submit revised forms. Alternatively, wait until the full investigation of Park Lodge had been completed. Mrs H "explicitly" advised Winchmore Hill Practice to make a submission and include the erroneous information.
- Mrs H was informed that if additional errors were discovered, it would be happy to make further corrections as required and a revised AW171 form was subsequently submitted to NHS BSA. However, there was continuing confusion over the issue of overtime. There were also issues concerning the WTE hours. Although it had addressed the overtime issue with Mrs H, the Representative continued to raise queries, as historically Mrs H had been paid at a different rate for overtime compared to her base salary. Winchmore Hill Practice contacted NHS BSA regarding this. It reaffirmed that if the overtime rate was at a different rate to base salary, then it is not pensionable.
- In September 2018, Winchmore Hill Practice shared all the documentation that it had used for the pension calculations, in respect of the period 2015-2018, with Mrs H. In view of the errors made in previous submissions, Winchmore Hill Practice contacted its specialist medical accountants for support and provided all the documentation, including the AW8, AW171 and payroll data. The accountants shared the information with NHS BSA so that the matter could be resolved.
- It continued in its exchanges with NHS BSA, as there was an outstanding query concerning notional WTE hours. It confirmed to Mrs H that her WTE equivalent hours were 36 hours while she was working at Park Lodge.
- As part of its discussions during the transition period, Winchmore Hill Practice explained to staff at Park Lodge that they were on "very different salary scales" to the Winchmore Hill staff. It agreed that the Park Lodge salary scale would remain in force. However, the remaining terms of their employment contract would be in line with Winchmore Hill Practice. It acknowledged that it did not arrange for Mrs H to sign this amendment to her contract. Winchmore Hill Practice notified NHS BSA

that Mrs H's WTE hours changed to 37.5 hours in April 2017. Due to the oversight in obtaining a signed amendment to Mrs H's contract, Winchmore Hill Practice offered to amend her WTE to 36 hours on the revised forms. These were subsequently submitted in August 2019.

- Winchmore Hill Practice is satisfied that it sent Mrs H the documentation used to complete the pension forms. To ensure it provided accurate information, it sought assistance from its specialist medical accountants and consulted extensively with NHS BSA. It has been open and transparent with Mrs H in response to her concerns about discrepancies with her overtime rate. The issues relate to changes prior to its involvement; it is unable to rectify these.
- Winchmore Hill Practice reviewed its grievance procedure. It noted that the policy applied to grievances ongoing at the time the employee leaves the practice. Mrs H's employment ended in January 2018. In any event, the grievance procedure entitles an employee to be accompanied at grievance hearings by a fellow employee, an employee appointed to act on behalf of other employees in negotiations with the Practice, or a trade union official.

Adjudicator's Opinion

49. Mrs H's complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA and Winchmore Hill Practice. The Adjudicator's findings are summarised below.
50. The Adjudicator noted that Winchmore Hill Practice had engaged its accountants to review its submissions to NHS BSA. The Adjudicator said our investigation had found that the information forming the basis of those submissions was shared with NHS BSA, as the administrators. On reviewing the evidence, the Adjudicator was satisfied that Winchmore Hill Practice took an appropriate course of action. The Adjudicator said that it would be disproportionate in the circumstances to recommend that it undertake a further review.
51. The Adjudicator also said that the overpayment had arisen following a revised submission by Mrs H's employer. The Adjudicator said she was unable to conclude that, with reasonable diligence, NHS BSA would likely have identified at an earlier date that a mistake had been made. The Adjudicator was satisfied that it did not have all the information required to know that it would inevitably be making an overpayment.
52. The Adjudicator said that the effect of section 32 of the Limitation Act 1980, is that NHS BSA has six years from 23 August 2019, when it could have discovered the mistake, to bring its claim for recovery of the overpayment. That is, until August 2025.
53. The Adjudicator noted that, in the most recent case of *Webber v Department for Education* [2016] EWHC 2519 (Ch), the High Court held that the applicable cut-off date, for the purposes of the Limitation Act, was the date that Teachers' Pensions

brought its claim during the course of the Pensions Ombudsman's complaints procedure. That date was identified as being the receipt by the Pensions Ombudsman of Teachers' Pensions' response to Mr Webber's complaint.

54. The Adjudicator said that in Mrs H's case, the relevant cut-off date is 31 December 2020, the date TPO received NHS BSA's response to Mrs H's complaint. The Adjudicator also said NHS BSA had submitted its formal response within the timeframe for the purposes of the Limitation Act 1980. Consequently, it can recover all the overpayment subject to any other defence(s) available to Mrs H.
55. The Adjudicator highlighted that the following conditions must be satisfied for a change of position defence to succeed:-
 - The applicant's circumstances must have changed detrimentally and irreversibly.
 - The change in circumstances was caused by the receipt of the overpayment.
 - The applicant must have acted in "good faith."
56. The Adjudicator said Mrs H had met the good faith test. Mrs H would not have been aware that her pension would subsequently be revised and that this would result in an overpayment.
57. However, the Adjudicator concluded that there was insufficient evidence to form a view on whether the overpayment had been spent on something Mrs H would not otherwise have bought and that the expenditure was irreversible. It is open to Mrs H to provide supporting evidence if she considers that the defence applies in her case.
58. The Adjudicator was of the view that an "estoppel" defence would not apply. The sequence of events indicated that Mrs H gave notice of her decision to leave employment, and take Age Retirement, before receiving details of her retirement benefits. In these circumstances, it was difficult to conclude that the retirement figures were the determining factor in her decision to leave employment.
59. The Adjudicator said she was unable to identify that the necessary elements for a contract existed in this case. Namely, offer, acceptance, consideration, and the intention to enter into legal relations. The Adjudicator also said that the evidence did not support the view that NHS BSA intended to enter into legal relations in addition to those which already existed due to Mrs H's status as a member of the Scheme.
60. The Adjudicator concluded that, in the absence of a defence against recovery, NHS BSA could seek recovery of the overpayment. Before agreeing a repayment plan, NHS BSA should consider the impact of recovery on Mrs H's welfare, in line with HM Treasury's Managing Public Money (**MPM**) code of practice.
61. The Adjudicator highlighted that TPO does not have regulatory powers. Consequently, I cannot direct that NHS BSA changes its administrative procedures generally or impose fines.

62. Regarding the overpayment, the Adjudicator acknowledged that where there is a dispute concerning the amount to be repaid, the “set-off” cannot be exercised unless the obligation to repay has become enforceable under an order of a competent court or in consequence of an award of an arbitrator (Section 91(6) of the Pensions Act 1995).
63. The Adjudicator said the evidence did not support the view that NHS BSA had taken action to offset the overpayment in Mrs H’s case. Its actions in issuing demands for payment did not amount to a breach of Section 91(6) of the Pensions Act 1995. Furthermore, NHS BSA would not have been aware, until October 2020, that Mrs H had referred her dispute to TPO.
64. The Adjudicator concluded that the dispute had arisen because of acts/or omissions on the part of the employer. However, NHS BSA failed to query Mrs H’s notional WTE total pensionable pay despite the obvious inaccuracies. This was a contributory factor in the delays that had occurred during the retirement process.
65. The Adjudicator noted that NHS BSA had provided contradictory information regarding the amount of the overpayment. The Adjudicator recommended that NHS BSA clarify in writing the total overpayment and include a breakdown of the calculation.
66. The Adjudicator concluded that Mrs H was entitled to a distress and inconvenience award in respect of the non-financial injustice she had suffered because of NHS BSA’s role in the matter.
67. The Adjudicator considered that the administrative errors on the part of Winchmore Hill Practice also amounted to maladministration. The Adjudicator noted that Mrs H did not receive details of her final retirement award until more than 12 months after she had retired. The Adjudicator recommended that £1,000 be paid directly to Mrs H in respect of the serious non-financial injustice she had suffered: Winchmore Hill Practice and NHS BSA should meet the cost equally.
68. Mrs H did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. The Representative provided further comments which I have noted. I agree that given the number of errors the distress and inconvenience caused does come within my category of ‘severe’ and so have adjusted the award for non-financial injustice accordingly.

The Representative’s further comments

69. Having reviewed my factsheet on Redress for Non-Financial Injustice, the Representative considers that the decision in the case of *Smith v Sheffield Teaching Hospitals NHS Foundation Trust* [2017] EWHC 2545 (Ch), is relevant to this case. The Representative argues that the judge increased the distress and inconvenience award and highlighted “several instances of maladministration, occurring over a prolonged period, which was material to the likely level of distress.”

70. The Representative says it is a “statement of fact” that there have been several instances of maladministration over an extended period in Mrs H’s case. This is supported by the amendments submitted by Winchmore Hill Practice and its representatives. Mrs H applied for her Retirement Benefits on 8 November 2017; the “final Revised Notification of Award” was produced by NHS BSA on 18 December 2019. Taking into account the complaint process, this matter has been ongoing for almost three and a half years. Consequently, he respectfully submits that the award for non-financial injustice should fall into the “Severe” category.
71. The Representative says ISM and the third party offered to provide support in connection with the Review. However, Winchmore Hill Practice did not accept their offer. Winchmore Hill Practice has repeatedly refused to provide information of “critical influence” to the calculation of Mrs H’s retirement benefits. In his professional opinion, the engagement of the accountants by Winchmore Hill Practice was, “wholly inappropriate” as it lacked expertise of the subject matter.
72. The Representative asserts that Winchmore Hill Practice repeatedly refused to acknowledge that Mrs H had appointed ISM as her representative and to meet with ISM. It also refused to provide the detailed breakdown of the calculations of each of the individual amendments submitted during the period 20 June 2018 to 5 April 2019. ISM requested a detailed breakdown of the figure(s) submitted to NHS BSA that had resulted in the “Notification of the Revised Award” produced by NHS BSA on 18 December 2019. The information is critical to the amount of the overpayment. Moreover, Mrs H is unable to “substantiate” the retirement benefits that are now in payment.
73. The Representative has pointed out that the parties subsequently agreed that the outstanding overpayment amounts to £343.93. The Representative has explained that Mrs H used the retirement lump sum for relocation and resettlement expenses. Expenditure he considers she would not otherwise have incurred. He also considers the expenditure to be irreversible.
74. Briefly, the Representative has proposed that:-
- Winchmore Hill Practice provide the detailed breakdown of the amount submitted to NHS BSA on 23 August 2019.
 - Any “overtime” payments, which were paid at a rate lower than the “Basic Pay Hourly Rate,” should be recalculated and paid to Mrs H. They should also be included in the calculations of Mrs H’s retirement benefits.
 - NHS BSA should write off the outstanding balance of £343.93, on the basis that Mrs H has a change of position defence to recovery of the overpayment.

Ombudsman's decision

75. I acknowledge that the Representative has raised wider issues concerning Winchmore Hill Practice's payroll and NHS BSA's administration of the Scheme. This Determination only deals with Mrs H's complaint that was accepted for investigation. I am not considering any matters that fall outside the scope of that complaint.
76. Winchmore Hill Practice is not the original employer in this case. I agree with the Adjudicator that it took an appropriate course of action by engaging an accounting firm to conduct a review and made submissions to NHS BSA.
77. It is not the role of TPO to question an employer's choice of professional advisers, or otherwise. Similarly, it is not the role of TPO to independently audit information submitted on behalf of an employer. The fact that the Representative has expressed concerns regarding Winchmore Hill Practice's choice of advisers, and the accuracy of its submissions to NHS BSA, is not a sufficient basis on which to direct a further review of information that has already been independently reviewed.
78. Winchmore Hill Practice and NHS BSA failed to show sufficient care in their handling of Mrs H's case. The impact of their administrative errors is that Mrs H was overpaid and NHS BSA is now seeking to recover the sum of £343.93.
79. I am not persuaded on reviewing the evidence that Mrs H has a change of position defence to recovery of the overpayment. I find that she would have incurred relocation and resettlement expenses in any event.
80. Mrs H has undoubtedly sustained non-financial injustice because of maladministration on the part of the Winchmore Practice and NHS BSA. Given the number of errors I have increased the award to £1,500, in view of the severe distress and inconvenience that Mrs H has suffered over a prolonged period. I have split the award with NHS BSA directed to pay £500 and Winchmore Hill Practice £1,000.
81. The complaint is partly upheld.

Directions

82. Within 28 days of the date of this Determination, £500 shall be paid to Mrs H by NHS BSA and £1,000 shall be paid to Mrs H by Winchmore Hill Practice, in respect of the severe non-financial injustice she has suffered. It is for Mrs H to decide whether she wishes to repay NHA BSA the outstanding overpayment of £343.93 from the award or whether to agree some other repayment arrangement.

Anthony Arter

Pensions Ombudsman
13 June 2022

Appendix

The National Health Service Pension Scheme Regulations 1995

“U3 Accounts and actuarial reports

- (1) The Secretary of State must keep accounts for the scheme in a form approved by the Treasury.
- (2) The accounts are to be open to examination by the Comptroller and Auditor General.
- (3) In respect of a member, an employing authority must keep a record of all—
 - (a) contributions paid under regulations D1, Q6 and Q8;
 - (b) contributions due under regulations D1, Q6 and Q8 but unpaid;
 - (c) contributions paid under regulation [D2];
 - (d) contributions due under regulation [D2] but unpaid;
 - (e) hours, half-days or sessions constituting part-time pensionable employment for the purposes of regulation R5;
 - (f) pensionable pay;
 - (g) absences from work referred to in regulations P1 and P2;
 - (h) commencement and termination of pensionable employment;
 - (i) reason for termination of pensionable employment.
- (4) That record is to be in a manner approved by the Secretary of State.
 - (5) Except where the Secretary of State waives such requirement, an employing authority must provide the Secretary of State with a composite statement in respect of all scheme members covering all the matters referred to in paragraph (3) within 2 months of the end of a scheme year: this is subject to Schedule 2.
- (6) Where an employing authority has provided the information in accordance with paragraph (5) and subsequently there is a change to any of that information, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised information.
- (7) In respect of each scheme year an employing authority must, within 2 months of a request and in a manner prescribed by the Secretary of State, provide the Secretary of State with details of the total contributions paid for all scheme members under regulations D1, D2, Q6 and Q8.

(8) Where an employing authority has provided the details requested in accordance with paragraph (7) and subsequently there is a change in those details, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised details.

(9) [If the Secretary of State so requests,] an employing authority must, 1 month before the beginning of each scheme year, and in a manner prescribed the Secretary of State, provide the Secretary of State with a statement of estimated total contributions due under regulations D1, D2, Q6 and Q8 for that scheme year.”