

Ombudsman's Determination

Applicant	Miss N
Scheme	HSC Pension Scheme (the Scheme)
Respondent	HSC Pension Service (HSC)

Outcome

1. I do not uphold Miss N's complaint and no further action is required by HSC.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss N complains that HSC incorrectly calculated the amount of money she could earn, without her pension being subject to abatement. She also complains that HSC failed to provide details of her earnings limit on a quarterly basis.

Background information, including submissions from the parties

4. Miss N was employed by the Northern Health and Social Care Trust (**the Trust**) as a Health Visitor, and is a member of the Scheme which is administered by HSC.
5. In February 2014, Miss N retired from the Trust and started taking benefits from the Scheme. However she was subsequently re-employed from March 2014 to November 2014, as a bank Health Visitor. As such her pension benefits, would, dependent on her earnings, be subject to abatement.
6. Around the time of her reemployment Miss N was provided with the leaflet 'a guide for pensioners and their dependents' (**the guide**), which explained how abatement worked and set out the situations in which this would arise.
7. On 6 March 2014, HSC wrote to Miss N to inform her that she could earn £4,653.59 without her pension income being abated. HSC's letter confirmed, in bold typeface, that Miss N's earnings would be checked on a quarterly basis to ensure no overpayment of benefits occurred.
8. On 4 November 2014, Miss N received a letter from HSC, dated 23 October 2014, informing her that an overpayment of £1,759.41 had occurred. HSC's letter said that

for the quarter ending 30 June 2014, Miss N had earned £6,424.07 against an earnings limit of £4,664.66.

9. HSC demanded repayment of the overpayment and cautioned that if this was not repaid, the money would be deducted from her November pension payment. The letter also said, "failure to repay an overpayment of benefits may result in a referral to the Counter Fraud and Probity Service."
10. Following this, Miss N contacted Mr David Ford MLA, her Member of the Legislative Assembly for Northern Ireland, for assistance with the overpayment issue. Mr Ford's office made enquiries to HSC on Miss N's behalf.
11. HSC has provided evidence that on 14 November 2014, it requested details about Miss N's earnings from Payroll Shared Services (**PSS**). HSC chased PSS for this information on 17 November 2014, and again on 20 November 2014.
12. An email dated 20 November 2014, from PSS to HSC, says:

"I have sent this query to senior management as it needs investigating. They have been very busy completing urgent tasks. Hopefully I will be able to answer your query shortly."
13. On 7 January 2015, PSS provided details of Miss N's correct earnings to HSC.
14. On 8 January 2015, HSC again wrote to Miss N regarding the overpayment. HSC's letter said, in bold typeface, "we have received revised notification from your employer of your re-employment earnings." The letter went on to confirm that for the quarters ending 30 June 2014 and 30 September 2014, Miss N's earnings were £4,523.06 and £5,256.25 respectively. As a consequence, when assessed against the permitted earnings figures, the overpayment had reduced to £449.21.

Summary of Miss N's position

15. HSC informed Miss N that it would contact her quarterly to confirm what her earnings allowance would be. This did not happen. It was only on telephoning HSC and her employer's payroll service, which she did on several occasions, that this information was provided.
16. Miss N relied on HSC's statement that there had been an overpayment, believing this to be accurate. HSC's letter demanding repayment of the overpayment was, "unnecessarily threatening in referring to the Counter Fraud and Probity Services." The tone of the letter indicated that Miss N had made a serious miscalculation, therefore she immediately stopped working.
17. Miss N was, "humiliated and embarrassed" at having to leave work immediately. She states, "it was inferred she had been dishonest" which caused her considerable distress. Further, as a consequence of being incorrectly informed that she had exceeded her earnings allowance, she had lost the opportunity to undertake more

work. Miss N estimated that she had lost earnings of around £4,700 as a result of this.

18. When HSC issued revised abatement calculations she received no, “explanation, as to how the initial figure was reached, the discrepancy of the calculation, or an apology.”
19. In her letter to this office dated 9 February 2016, Miss N has said:

“The letter dated 23 October 2014 was from HSC Pensions – not Payroll Shared Services. Therefore my dispute is with HSC Pensions not Payroll Shared Services.”

Summary of HSC’s position

20. When calculating Miss N’s permitted earnings, HSC is dependent on receiving up-to-date earnings information from PSS. HSC recalculated the overpayment from £1,759.41 to £449.21 as soon as it received updated earnings information from PSS. HSC has also deployed a member of its own staff to assist PSS in providing timely and accurate information for pension purposes.
21. Miss N was permitted to earn £18,660.98 in the 2014/15 tax year, however she actually earned £13,876.03 so the reference to Miss N having received an overpayment is incorrect. HSC apologised for this misinformation.
22. Miss N has not exceeded her permitted earnings allowance for the quarters ending June and September 2015, and HSC will continue to review Miss N’s earnings on a quarterly basis.
23. It was not HSC’s intention that its letter, notifying Miss N of the overpayment, should have a threatening tone. The reference to the Counter Fraud and Probity Service has now been removed from the body of the letter and is included only as a footnote.
24. HSC does not accept that it was responsible for preventing Miss N from working additional hours. On this point HSC said:

“I do not accept that HSCPS is wholly responsible in preventing you from working additional hours. HSCPS staff advised you of your permitted earn figure and it is then your responsibility to remain within this limit if you do not wish to allow your pension to become subject to abatement.”

Adjudicator’s Opinion

25. Miss N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by HSC. The Adjudicator’s findings are summarised briefly below: -

- HSC did inform Miss N that it would advise her of her earnings limit on a quarterly basis. But the relationship between HSC and PSS is such that HSC is entirely dependent on receiving correct information from PSS to be in a position to do this.
- In this case it does not appear that the failure to provide the quarterly earnings updates was an error attributable to HSC. For example HSC requested information about Miss N's earnings on 14 November 2014, it actively sought this information and was proactive in chasing the matter up when no response was received. However, it was not until 7 January 2015, that PSS provided the information HSC requested.
- PSS seemed to acknowledge responsibility for the failure to provide the information to HSC by saying, in the email dated 20 November 2014, "I have sent this query to senior management as it needs investigating." HSC cannot reasonably be held accountable for PSS' delay in providing information about Miss N's earnings.
- HSC was prompt in confirming the position to Miss N when it did receive information from PSS, writing to her the following day. Although HSC's letter dated 8 January 2015, incorrectly stated that the overpayment had reduced from around £1,760 to around £450, HSC was acting in good faith based on the incorrect information PSS had provided.
- HSC has taken adequate steps to try and prevent a reoccurrence of the problems Miss N experienced. For example it has seconded a member of staff to assist PSS in providing the information it requires. HSC has also confirmed that the reference to a referral to the Counter Fraud and Probity Service, which Miss N says caused her considerable distress, has now been given less prominence in HSC's letters.
- Miss N has described in detail the distress she experienced of learning of the alleged overpayment and has explained the circumstances around her suddenly having to stop working, for fear of exacerbating the overpayment. Although this situation was undoubtedly upsetting for Miss N, HSC has not acted in maladministration therefore it follows that no award for the non-financial injustice Miss N has suffered can be recommended.
- For the same reason, essentially that there has been no maladministration attributable to HSC, Miss N cannot be compensated for her loss of earnings potential. But, even if this were not the case, it is doubtful that redress for the lost earnings Miss N is claiming for could be awarded. Miss N was employed on a 'bank' contract where her hours of work could vary and were not assured, so there was no guarantee that Miss N would have earned the additional £4,700 she is seeking.

26. Miss N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss N provided her further comments, summarised below, which do not change the outcome: -
- HSC should not have provided an undertaking to monitor Miss N's earnings on a quarterly basis if it did not have the ability to do this. If HSC and PSS had adequate records and proper communication this situation could have been avoided.
 - When HSC discovered the overpayment calculation was incorrect, a statement was sent with no explanation or apology. When Miss N tried to complain on 3 September 2015, she was told, "the letter would only be accepted if I included an Internal Dispute 1 form."
 - Miss N tried to contact HSC and PSS to try and discuss the letter, but both organisations blamed one another and refused to take responsibility for their actions. Miss N has said, "as an individual and user of their [HSC's] services I should have a right to expect them to attend to these matters competently (this also includes managing their relationship with [PSS])."
 - The action taken by HSC on 14 November 2014, 17 November 2014 and 20 November 2014, was clearly in direct response to Miss N contacting Mr David Ford's office on 13 November 2014, which in turn contacted HSC. HSC failed to investigate matters properly, preferring a, "personal attack and threat" that if the overpayment was not repaid, the matter would be referred to the Counter Fraud and Probity Service. This inferred that Miss N had been dishonest.
 - The adjudicator has referred to HSC having taken adequate steps to prevent reoccurrence of the problems. The fact that HSC has amended its process means that there must have been maladministration.
 - HSC was responsible for the letter which caused Miss N to abruptly, and totally unnecessarily, terminate her employment. This caused Miss N significant stress. There is no question that Miss N would have continued to work as planned, had it not been for HSC saying there had been an overpayment, so HSC has also caused considerable financial loss.
27. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Miss N for completeness.

Ombudsman's decision

28. In her letter to this office dated 9 February 2016, Miss N has made what is, to me, an unequivocal statement that she believes HSC to be at fault. As such this Determination considers only the actions and inactions of HSC and does not consider those of PSS which fall outside of the scope of the complaint before me.

29. HSC's responsibility is to administer the Scheme. HSC is not Miss N's employer so I agree that it is dependent on receiving accurate earnings information from Miss N's employer in order to determine her earnings margin.
30. PSS acts as an agent of Miss N's employer and is engaged to administer payroll on behalf of her employer. As such PSS and HSC are entirely separate entities and, because there is no evidence that PSS is an agent of HSC, I cannot agree that HSC has assumed responsibility for the actions of PSS.
31. The guide which Miss N received explained how HSC would deal with abatement. This document explained that HSC would, "ask your employer how much you were paid during the quarter". I find this makes it clear that HSC is reliant on PSS providing earnings information in order to calculate the earnings margin.
32. I have also considered Miss N's comment that HSC did not fully explain the variance in the overpayment calculations. However I find that HSC did inform Miss N that the updated calculation was as a result of a revised notification from her employer about her earnings. This was set out prominently in the letter in bold typeface.
33. Further, the guide explained that although calculated quarterly, earnings would be assessed at the end of the year, in order to determine whether there had been an overpayment in the context of the entire year:

"At the end of each financial year we will look at your pay for the **whole year** and compare it with your **annual** earnings margin (your quarterly earnings margin x 4). This has the effect of 'spreading' your pay evenly across the whole year. This could mean that if you have repaid pension because you were overpaid in one quarter but have been below your earnings margin in others, you may receive some pension back. In some circumstances, however, it could mean that there has been a further overpayment of pension which you have to repay." (Original emphasis).
34. I acknowledge that, on receiving the initial notification of the overpayment, Miss N stopped work in order to prevent the overpayment increasing. However, in my view the guide makes it clear that an overpayment in one quarter does not necessarily result in an overpayment for the entire year when earnings are spread out evenly. So I cannot agree that HSC is responsible for the loss of future earnings Miss N says she has foregone as a result of ceasing work.
35. Turning now to address the other points Miss N has made. HSC has established a procedure for dealing with complaints under the Scheme's internal dispute resolution procedure (**IDRP**). I do not find it unreasonable that HSC required Miss N to complete a form in order to submit her IDRP complaint.
36. In my view HSC has acted on the feedback Miss N has provided and has taken practical steps to improve the service it provides. It has redrafted the standardised letters which Miss N found to be distressing, it also seconded a member of staff to support PSS in an effort to prevent a recurrence of the problems Miss N has

experienced. I consider HSC's actions to be entirely reasonable and I do not find that HSC altering its internal processes is an indication that it has acted in maladministration.

37. Therefore, I do not uphold Miss N's complaint.

Anthony Arter

Pensions Ombudsman
28 July 2017