

Ombudsman's Determination

Applicant	Mr K
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA), Equiniti

Outcome

1. I do not uphold Mr K's complaint and no further action is required by NHS BSA or Equiniti.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr K is unhappy because Equiniti, on NHS BSA's behalf, is seeking to recover an overpayment from him in relation to a Permanent Injury Benefit (**PIB**) award he receives from the Scheme.
4. NHS BSA has confirmed that an overpayment accrued because Mr K's PIB award began to be paid before it had been abated.
5. Mr K says he was not made aware his PIB award may be abated, and as such it is unfair for the overpayment to be recovered. This is particularly the case, as his PIB award was in payment for a long time without abatement being applied.

Background information, including submissions from the parties

6. The salient material facts are set out below.
7. On 21 August 2012, Mr K was informed that he had been granted a PIB award. The letter said the benefits would be subject to abatement as he remained in NHS employment, but that he would be contacted further once this had been properly assessed.
8. On 27 December 2012, Equiniti received instruction from NHS BSA to commence paying the PIB award to Mr K. However, Mr K's benefits had not been abated at that stage, and so Equiniti issued the relevant forms to commence this process.

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9. In particular, on 31 December 2012, Equiniti issued an RE29 and an RE08 form to NHS BSA and Mr K respectively. These forms were to gather information such that Mr K's benefits could be assessed to see if they ought to be abated. Mr K says he returned an RE08 form in January 2013.
10. On 7 January 2013, Mr K received a lump sum payment, which represented arrears of his PIB award from August 2012 until 7 January 2013. NHS BSA has confirmed that it instructed Equiniti to pay this, but it ought not to have done as abatement had not been assessed. Following this payment, Mr K received the PIB award in monthly instalments, which NHS BSA has confirmed was the correct process.
11. On 8 January 2013, Mr K's wife, Mrs K, rang Equiniti to highlight that Mr K was still working, and she asked if this would affect his award. There is no recording of this conversation, but Equiniti's call notes indicate Mr K was asked to provide authority for Equiniti to speak to his wife during that telephone call, before it would discuss his benefits with her. In particular, the calls notes record "DPA passed". In this sort of instance, "DPA" usually refers to the Data Protection Act, and this note therefore indicates Mr K was taken through a data protection process such that Equiniti would then speak to his wife about the issue being raised. Equiniti then advised Mrs K she would receive a call-back on the query.
12. On 10 January 2013, Equiniti returned the telephone call. Again, there is no recording of the conversation. However, Equiniti's call notes indicate the representative spoke to Mr K directly, and informed him that his benefits may be abated. There is no further evidence of any telephone calls between Equiniti and Mr K, or Mrs K, until April 2013.
13. On 23 January 2013, Equiniti received a completed RE29 form from NHS BSA. However, it had not received a completed RE08 form from Mr K and it issued another one a few weeks later.
14. Mrs K has sent a recording of a further telephone call, between herself and Equiniti, which she says took place in April 2013. The conversation was relatively quick, and Mrs K asked the representative if Mr K was entitled to the payments despite the fact he was working. The representative clarified whether Mrs K was referring to his injury award. Mrs K said she was and she asked if the benefits were taxable, or if they were more like a compensatory payment. The representative confirmed they are not taxable and that they are payments in relation to his injury.
15. On 25 April 2013, Equiniti issued another RE08 form, as it had no trace of receiving a completed one from Mr K. However, Mr K says he did not receive this form or the previous one sent in February 2013. On 4 July 2013, Equiniti issued another RE08 form, and a completed copy was finally received on 12 August 2013. On 12 September 2013, Equiniti informed Mr K that his PIB award ought to have been abated, and as such there had been an overpayment.
16. Mrs K raised a complaint on Mr K's behalf. In particular, she said she had been concerned that Mr K's benefits might be reduced, and as a result she had telephoned

Equiniti several times to check his entitlement. She highlighted that she had rung Equiniti in January and April 2013. She said, in April 2013, she had been explicitly told that Mr K was entitled to his benefits.

17. Mrs K said that Mr K suffers from a health condition such that he cannot handle his finances, and Equiniti and NHS BSA ought to have dealt with her directly.
18. NHS BSA concedes that it ought not to have instructed Equiniti to pay the lump sum in January 2013. However, Equiniti and NHS BSA have highlighted that Mr K was informed several times that his PIB award may be abated, and so he would have known his benefits might be reduced retrospectively.
19. Furthermore, Equiniti has confirmed with our Office that it has never received instruction from Mr K to only deal with his wife. Although, NHS BSA confirmed that it has, the first letter of authority it received from Mr K, asking NHS BSA to speak to his wife concerning his benefits, was on 29 November 2013. Notably, this was after the overpayment had arisen and repayment had been requested.
20. Mrs K has queried why it took so long for Mr K's benefits to be abated. In response, Equiniti has evidenced that it did not receive a completed RE08 form from Mr K for a significant amount of time, despite sending him a copy on several occasions.
21. When Mrs K was asked how the overpayment was spent, she provided an extract of a logbook for a car.

Adjudicator's Opinion

22. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA or Equiniti. The Adjudicator's findings are summarised briefly below:-
 - The starting position for complaints concerning an overpayment is that the scheme in question is usually entitled to recover the money. However, a scheme member may be able to raise a successful defence against recovery.
 - The overpayment was accrued entirely within the last six years, so NHS BSA and Equiniti are not time-barred from its recovery.
 - The defences of estoppel and change of position were also considered. In order for Mr K to rely on a defence of estoppel, he needed to evidence that he received an incorrect statement from NHS BSA or Equiniti, which he reasonably relied on to his detriment. In order for Mr K to rely on a defence of change of position, he needed to evidence that he received the overpayment in good faith and then spent it in such a way as to irreversibly change his position. For example, the money must have been spent on something Mr K would not otherwise have bought; and the expenditure in question must have been irreversible.

- The Adjudicator was not satisfied that Mr K had reasonably relied on the overpayment, or received it in good faith, as he had been told by letter and by telephone that his benefits may be subject to abatement. It was noted that Mrs K was never informed by telephone that the overpayment may be subject to abatement; however, there was no evidence to suggest Equiniti or NHS BSA had been told to only deal with her directly before the overpayment accrued. Equiniti may have said it would telephone Mrs K back in January 2013; however, the fact that Equiniti spoke directly to Mr K does not amount to maladministration as he is the Scheme member.
 - Mrs K spoke with Equiniti again in April 2013. However, given the way her questions were phrased, the Adjudicator was satisfied that she and the representative may have been speaking at cross purposes.
 - Whilst NHS BSA has conceded that the lump sum ought not to have been paid to Mr K in January 2013, Mr K should also have been reasonably aware that the payment may be abated. Furthermore, NHS BSA did not receive a completed RE08 form from Mr K until August 2013. Once it had received the form, NHS BSA promptly informed Mr K that there had been an overpayment.
 - In any event, the Adjudicator was not satisfied that the overpayment had been spent in such a way as to irreversibly change Mr K's financial position. Therefore, the Adjudicator did not believe that Mr K had a successful legal defence against recovery of the overpayment.
23. Mrs K, on behalf of Mr K, did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs K provided further comments and supporting evidence. In particular, she raised the following points:-
- Once Mr K had provided Equiniti with authorisation to discuss his benefits with her in January 2013, it should have ensured it spoke with her when it returned her telephone call.
 - The Adjudicator has assumed that she and Equiniti were speaking at cross purposes in April 2013, whereas it is her belief she asked a clear question and the representative simply provided an incorrect response.
 - Mrs K says that she failed to receive the correct information in spite of requesting Equiniti for it on several occasions. As such, the overpayment was spent in good faith.
 - Mrs K telephoned Equiniti again in July 2013, and was told it was not the best department to contact regarding questions about abatement. At this time, she was given contact details for NHS BSA. She believes she ought to have been told this earlier.

24. Mrs K also provided further evidence about the car which she says was paid for by the overpayment. In particular, she has provided evidence that the car was purchased in March 2013 for £4,650. Lastly, she says she is being dismissed from work on the grounds of ill-health, and wishes for this to be taken into account.
25. Mrs K's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs K for completeness.

Ombudsman's decision

26. I acknowledge that Mr K has a health condition and that Mrs K says this makes it necessary for her to manage his finances. However, I have reviewed the evidence and have concluded that NHS BSA and Equiniti were not made aware of this before the overpayment accrued. Furthermore, there is insufficient evidence to suggest that Mr K would not have understood the letter, which stated his benefits may be abated, or understood the information he was provided with during the telephone call on 10 January 2013.
27. Mrs K has emphasised that Equiniti was authorised to speak with her on 10 January 2013. However, that is not the same as saying that Equiniti ought to have done so; Equiniti had a choice, to speak with either Mr or Mrs K. I do not agree that because Equiniti spoke to Mr K that amounts to maladministration.
28. Furthermore, if Mrs K remained unsure about whether Mr K's benefits would be abated, she could have telephoned Equiniti again herself. She did not do this until April 2013, yet Mr K purchased the car in March 2013. If Mrs K was dealing with Mr K's finances, and was still expecting a call back from Equiniti in March regarding his benefits, it is difficult to conclude that the car was purchased in good faith.
29. Mrs K has also asserted that the Equiniti representative understood her questions during the telephone call in April 2013, and that the representative simply provided incorrect information in response. I do not agree. Whilst it may have been clear to Mrs K what she was asking and its wider context, it is likely that the Equiniti representative did not appreciate this. Mrs K asked if Mr K was entitled to the benefits and, specifically, if they were taxable, I am not persuaded that the representative understood that Mrs K was seeking information regarding abatement. It is likely that the representative may have seen from Mr K's file that he had previously been informed, by letter and telephone, that his benefits may be abated and the representative was asked what the position was in relation to the payment of tax.

30. Mrs K has highlighted that, in July 2013, Equiniti told her that she should have contacted NHS BSA with any questions concerning abatement. However, I do not believe this is relevant, as Equiniti had previously told Mr K that his benefits may be abated. This was the information Mr and Mrs, K have argued that they needed, it is immaterial which party gave it to them. Mrs K's comments would only be relevant if I believed Equiniti had provided either Mr K or Mrs K with incorrect information. As I am not satisfied that it did, I do not agree with her that this materially alters the position..
31. However, even had Mr K received the overpayment in good faith, I am not satisfied he has relied on it to his detriment or spent it irreversibly. The evidence Mrs K has provided in relation to the car does not account for the full overpayment, or even the entirety of the lump sum received in January 2013. In addition, Mrs K has sent no other details about Mr K's expenditure at the time, so I cannot conclude whether any of the overpayment was spent on the car. For example, the car may have been purchased with other funds, and Mr K may still have the overpayment or used the monies in other ways.
32. Lastly, I am sorry to learn that Mrs K is being dismissed from work on grounds of ill-health, however, this does not mean that Mr K can now successfully raise a defence of estoppel or change of position..
33. I would expect NHS BSA and Equiniti to take Mr K's circumstances into account when discussing a repayment plan with him, to ensure any repayments are affordable and do not cause hardship. Mr K's circumstances may in turn be affected by Mrs K's employment ending. However, I do not consider that it would be reasonable to ask NHS BSA and Equiniti to write off the overpayment based on the available evidence. I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
11 January 2018