

Ombudsman's Determination

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| Applicant | Mrs Y |
| Scheme | NHS Pension Scheme (the Scheme) |
| Respondent | NHS Pensions |

Outcome

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

Complaint summary

3. Mrs Y raised a complaint with NHS Pensions when she retired in 2012 about the exclusion of her bank hours. She is unhappy with the way NHS Pensions handled this complaint and, when she thought the matter had been settled, she was informed the calculations were incorrect. She was issued with new calculations but, due to her previous involvement with NHS Pensions, she does not trust that these are correct.
4. Mrs Y also disagrees with the ex gratia payment NHS Pensions have made and believes that her additional distress and inconvenience warrant a higher payment.

Background information, including submissions from the parties

5. Mrs Y's pension first became payable on 16 April 2012.
6. In February 2012, Mrs Y contacted NHS Pensions asking for a service statement, as she did not think her bank work had been included in her pension calculations (she also offered to pay any additional contributions). NHS Pensions responded to say that her employer had not informed it that her bank work was pensionable. Following later investigations, NHS Pensions discovered that her employer had incorrectly opted her out of the Scheme. As a result, NHS Pensions treated her claim as retrospective under the Preston ruling on part time workers. The missing hours were eventually agreed by Mrs Y and her employer as 565.10 hours (or 107 days).
7. Throughout the life of the complaint, NHS Pensions have had difficulty getting information from Mrs Y's employer. In March 2012, it asked Mrs Y to provide proof of her bank work. Mrs Y provided copies of the relevant payslips, but NHS Pensions said that only some of these were readable. Mrs Y was also in contact with her employer, about the same matter, in July and August 2012.

8. Nothing further happened in relation to Mrs Y's claim again until she contacted NHS Pensions in March 2014. Mrs Y says that NHS Pensions had all of the information to proceed with her claim, while NHS Pensions say that it did not.
9. As a result of Mrs Y's contact in 2014, NHS Pensions restarted the process for her request for retrospective membership. Again, it had problems obtaining information from Mrs Y's employer. It appears that by 18 March 2015, NHS Pensions Retrospective Membership Service Team had accepted the period between 1 April 2000 and 31 March 2011 for her retrospective membership. It had also undertaken an initial calculation showing the contributions payable by Mrs Y as £705.
10. It was only in July 2015 when Mrs Y's employer agreed to support her claim for retrospective membership that NHS Pensions were able to progress matters further (this was after Mrs Y had taken a complaint through the Scheme's internal dispute resolution procedure). NHS Pensions agreed that the additional contribution of £705 would be taken from her pension arrears, rather than their usual process of deducting it from the tax free cash lump sum. In their letter of 18 August 2015, acknowledging that there had been a delay in resolving the issue, NHS Pensions offered Mrs Y £300 to recognise the distress and inconvenience this had caused her (this was increased from an original offer of £50) in full and final settlement of her complaint, which she agreed to.
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12. . NHS Pensions then wrote to Mrs Y on 10 September 2015 informing her that there had been an error as her Added Years had not been included in the original calculations. Mrs Y was provided with two options:
 - a) to pay contributions of £705 giving her an additional lump sum of £1,027.34 and an annual pension increase to £12,064.66 (gross) (pension arrears would also be paid from her retirement date in 2012); or
 - b) to pay contributions of £883.47 (£705 plus an additional £178.47 for the 14 days Added Years missed from the original calculation) and receive an additional lump sum of £1,161.75 and an annual pension increase to £12,086.09 (gross). Again, pension arrears would be calculated from the date of her retirement in 2012.
 - On 19 October 2015 Mrs Y requested, NHS Pensions to review the calculations. NHS Pensions did so and confirmed them as correct.
 - On dated 5 November 2015, NHS Pensions told Mrs Y:

"I would like to highlight that NHS Pensions has already increased the level of compensation from £50 to £300. In addition a concession has been made in respect of the two options provided to you. It may be helpful if I explain that normally when a member purchases added years, those contributions must be collected from all pensionable employments. However, NHS

Pensions has exceptionally provided an option for you to purchase the retrospective without including the added years. I would like to stress that this is something NHS Pensions would not ordinarily do. I therefore do not believe that in these circumstances it would be appropriate to increase the amount of compensation.

13. Mrs Y remained unhappy about the way that NHS Pensions handled her additional service request and brought a complaint to the Ombudsman in March 2016.
14. Her dissatisfaction covers three points, these being:
 - the delay between 2012 and 2014;
 - her mistrust of the figures provided by NHS Pensions; and
 - the unwillingness of NHS Pensions to pay her an additional ex gratia amount.
15. NHS Pensions agree that they are responsible for some delays in the handling of Mrs Y's complaint and that they provided her with an incorrect calculation. However, they argue that no further compensation should be offered to Mrs Y on the basis that:
 - £300 is above the amount considered reasonable by this Service at the time the offer was made (at that time, this Service's starting point to recognise non-financial loss of this nature was in the region of £250). It was also a reasonable figure taking into account that Mrs Y did not pursue her request for retrospective membership between 2012 and 2014;

Adjudicator's Opinion

16. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS Pensions. The Adjudicator's findings are summarised briefly below:
 - NHS Pensions agree that an error occurred. They offered £300, which Mrs Y initially agreed to as full and final settlement of her complaint, for the delays caused up to 18 August 2015. NHS Pensions had also compensated her in other ways (for example, by allowing her to pay her contributions from her pension arrears, thus giving her more tax free cash and the choice of repaying a higher or lower contribution amount).
 - It was recognised that Mrs Y did give NHS Pensions the information they requested in 2012 to allow it to consider her claim. It was agreed that it was not clear whether NHS Pensions sought to clarify the unreadable documents with Mrs Y in 2012 and therefore no steps were taken again until 2014. However, it was also noted that Mrs Y had not provided evidence to show that she too had taken steps to try and resolve the matter between 2012 and 2014 and therefore she must take some responsibility for the delay in having matters resolved.

17. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs Y for completeness.

Ombudsman's decision

18. I accept that Mrs Y contacted NHS Pensions in 2012 about her bank hours and it knew about her claim. I bear in mind that some of the difficulty in resolving this issue was due to the need to obtain clarification and confirmation of pensionable pay figures from Mrs Y's employer. I accept that Mrs Y tried to resolve matters with her employer. However, they are not party to the complaint. NHS Pensions have accepted responsibility for their part in the delay which occurred between 2012 and 2014. Mrs Y accepted an ex gratia payment of £300 in August 2015 and that payment was in line with awards which I would have made at that time.
19. NHS Pensions agree that a further error came to light after that date in that they had failed to include Mrs Y's Added Years in the additional service figures produced. I agree that this discovery would have caused Mrs Y some additional distress and mistrust. However, the omission was remedied promptly and there is no evidence that the final calculations are wrong.
20. NHS Pensions have exceptionally provided two options for Mrs Y to choose from. They have allowed her to choose whether she wants to pay a lesser amount in the short term (and therefore receive a lower benefit in the long term) or a higher amount now to receive a higher benefit in the long run. They have also agreed that any repayment of contributions (including those for added years) would be deducted from her pension arrears rather than being deducted from her tax free cash lump.
21. These options are in addition to the £300 ex gratia payment. In the circumstances I do not consider it necessary to make an additional award for distress and inconvenience.
22. Therefore, I do not uphold Mrs Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
13 September 2016