

Ombudsman's Determination

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| Applicant | Mrs G |
| Scheme | NHS Pension Scheme (the Scheme) |
| Respondents | Equiniti Paymaster (Equiniti) & NHS Business Services Authority (NHSBSA) |

Outcome

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

Complaint summary

3. Mrs G's complaint against Equiniti and NHSBSA is about: (1) the calculation of her Scheme pension and lump sum award; and (2) the payment of interest on the pension arrears she was awarded in December 2014.

Background information, including submissions from the parties

4. Mrs G had deferred benefits under the Scheme in respect of the pension she accrued up to November 1987. She says that she was unaware of the deferred benefits, as she had not received any benefit statements.
5. NHSBSA say that it wrote to Mrs G in July 1989 confirming her pension rights under the Scheme and the letter was not returned by the Post Office. Therefore, it had no grounds to believe that she had not received it.
6. Mrs G's deferred pension was due to be paid in May 2006, when she reached the age of 60. In 2012, when she claimed her deferred State Pension, she was informed by HM Revenue and Customs (**HMRC**) that she had a deferred pension under the Scheme.
7. In 2012, Mrs G was paid a pension of £1,220.65 per annum and a lump sum of £3,678.62 from the Scheme.
8. Part E6(2) of the National Health Service Pension Scheme Regulations 1995 (the **1995 Regulations**) states that the lump sum on retirement "will be equal to 3 times

that part of the yearly rate of pension which is attributable to contributions paid under Part D. Part E1(2) of the 1995 Regulations states: "The pension under this regulation shall be at a yearly rate of 1/80th of final year's pensionable pay for each complete year of pensionable service, plus the relevant daily proportion of that rate for each additional day of such service".

9. In 2014, Mrs G made enquiries with Equiniti about her Guaranteed Minimum Pension (**GMP**) under the Scheme. Equiniti responded saying that the Department of Work and Pensions (**DWP**) will have informed her of the amount. It said that any increase in the GMP is paid by DWP, with her State Pension, and not by the Scheme. It had been advised by the National Insurance Contributions Office (**NICO**) that her GMP was £1,651 per annum from 16 May 2006. As this was more than the pension she was receiving, her pension was increased to this rate as from 15 May 2006. Equiniti said that the arrears of pension due to her amounting to £2,208.23 gross would be included with the payment due on 22 December 2014. The amount would be subject to a deduction in respect of income tax.
10. In January 2015, Mrs G wrote to Equiniti saying that she had several concerns, and these were:
 - the lump sum she received in May 2012 was three times the original annual pension of £1,220.65 and not the correct amount of £1,651;
 - cost of living increases should have been applied from May 2006 until she started to receive her State Pension in May 2012;
 - she received no interest on any of the arrears – the original lump sum or the backdated pension from 2006 to 2012, or the arrears she received in December 2014.
11. In April 2015, Equiniti wrote to Mrs G with its comments as set out below.
 - As her GMP was greater than her deferred pension from the Scheme, it increased her annual pension to £1,651 from 15 May 2006. This resulted in a large arrears payment amounting to £1,876.62 (after tax) for the period 15 May 2006 to 22 November 2014, which was paid into her bank account on 22 December 2014.
 - Increases to pre-1988 GMPs are paid with the State Pension and therefore they are not paid from the Scheme. She confirmed that she had deferred claiming her State Pension and this significantly changed the recalculation of her pension from the Scheme and therefore it wrote to NICO for clarification.
 - The amount of her GMP, its applicable date and any information as to whether the GMP should be suspended for pension increase purposes are all notified by NICO and it must act on the instructions it receives.

- It has received confirmation from NICO that her GMP was suspended from 15 May 2006 until 15 April 2012. Therefore, her pension from the Scheme should not have been increased to the GMP rate from 15 May 2006.
 - It recalculated her pension to take account of the suspension of her GMP and the arrears paid to her in December 2014 was incorrect. Her pension had been overpaid by £1,130.70 net. As she was not entitled to this payment, it asked for repayment of the amount.
12. On 1 May 2015, in response to enquiries she raised, HMRC wrote to Mrs G explaining in some detail her GMP entitlement under the Scheme. It explained that:
- her pre-1988 GMP (and any inflation proofing of her post-1988 GMP in excess of 3%) is inflation proofed by way of a Notional Additional Pension and the increases give a higher rate of Additional Pension payable by the State;
 - inflation proofing of her post-1988 GMP up to 3% should be paid by the Scheme;
 - as she had not claimed her State pension until 16 April 2012, the Scheme should have paid inflation proofing on the whole of her pension it paid up to that date – after that date, the Scheme is only responsible for paying increases up to 3% on her post-1988 GMP.
13. On 15 May 2015, Mrs G wrote to Equiniti saying that as she did not understand why she was not eligible for her GMP until she took her State Pension in 2012, she contacted HMRC/NICO for clarification. She said that there were two important aspects highlighted in the reply she received from HMRC, which were:
- her GMP calculated on her contracted-out contributions was £31.87 per week (£31.75 pre-1988 and £0.12 post-1988) and payable from her State Pension Age;
 - the required inflation-proofing on her GMP should be paid by the Scheme until she took her State Pension in 2012.
14. On 22 May 2015, Equiniti responded to Mrs G saying that the action it had taken was correct because the GMP it currently held for her was £1,651, which is the pre-1988 GMP of £31.75 per week. However, it had written to HMRC about the post-1988 GMP of £0.12 per week.
15. On 1 June 2015, NHSBSA gave Mrs G a decision on her complaint under stage one of the Scheme's internal dispute resolution procedures (**IDRP**). The decision was not to uphold her complaint. NHSBSA confirmed that her lump sum benefit had been calculated in accordance with the regulations governing the Scheme (the **Regulations**), and account was taken of her GMP in calculating her benefits. In addition, the Regulations did not provide for interest to be paid in cases where a member has delayed making an application for payment of their retirement benefits.

16. Mrs G asked for her complaint to be considered under stage two IDRP. In September 2015, NHSBSA gave her a stage two IDRP decision as set out below.

- It said that her deferred benefits were a pension of £636.65 per annum and a lump sum of £1,909.95. However, additional pension increases, between May 2006 and May 2012, were applied to her benefits bring her pension and lump sum up to £1,220.65 and £3,678.62, respectively.
- The amount of her GMP was subsequently confirmed as £1,651, but this did not change the amount of the lump sum due to her. The lump sum of £3,678.62 was the correct amount calculated in accordance with the provisions under the Regulations.
- Under the Regulations, interest can only be paid where benefits are paid late through no fault of the member. In her case, she became entitled to retirement benefits on 15 May 2006, but did not submit an application for payment until 24 May 2012.
- There is no statutory requirement for 'defined benefit' schemes, such as the Scheme, to issue annual benefit statements. Its policy is to issue estimates of benefits on request only.
- Her complaint was not upheld.

17. On 6 October 2015, Equiniti informed Mrs G that the overpayment of £1,130.70 net, which it had initially asked her to repay had now been cancelled with immediate effect.

18. Mrs G says:

- Equiniti had initially paid her an incorrect pension, and, after protracted discussions over more than a year, it paid her arrears of the pension due to her but with no interest;
- she claimed her pension six years after she was eligible to receive it because she was not aware of its existence until she was informed by HMRC when she claimed her State Pension;
- had she known she had deferred benefits under the Scheme she would have claimed them earlier;
- she has not been paid any interest on the arrears of her benefits and she has possibly been paid a reduced lump sum;
- she made many phone calls to NHSBSA and was finally told that as she chose not to claim her pension when she was age 60, it was not at fault and had no obligation to pay interest on the arrears;

- NHSBSA say that it had written to her in 1989 to remind her to claim her pension in 2006 – this letter had been sent to a very old address, but as it had not been returned to NHSBSA it assumed that she had received it;
- she had informed her NHS employer of her new address and had received correspondence from it, sent to her new address, for many years;
- her NHS employer dealt with superannuation issues, so she had no reason to contact NHSBSA;
- she also believed that she had cashed in her superannuation benefits when she left NHS employment at various times previously.

Adjudicator's Opinion

19. Mrs G's complaint was considered by one of our Adjudicators who concluded that no further action was required by Equiniti and NHSBSA. The Adjudicator's findings are summarised briefly below:

- there is nothing in the 1995 Regulations which states that the lump sum should be calculated on the GMP if it is higher than pension based on the yearly rate – consequently, the lump sum paid to Mrs G on her retirement was correct;
- Equiniti had initially paid Mrs G a lower pension than she was entitled to and this is maladministration – however, it later paid her the correct pension and the shortfall in her pension;
- any interest for late payment of her GMP should be based on the difference between the GMP and the pension she had received for the period April 2012 to November 2014;
- Equiniti overpaid Mrs G's pension, by £1,130.70, which it subsequently decided not to reclaim – therefore, this adequately compensates her for any loss of interest for the late payment of her GMP.

20. Mrs G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs G 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 G for completeness.

Ombudsman's decision

21. Mrs G's response to the Adjudicator's Opinion is set out below.

- Equiniti did notify her in September 2014 that her pension was to be increased in line with her GMP, but denied any arrears were due to her for the period since 2006. She believes that interest should be paid on these arrears.
- Equiniti constantly asserted that her GMP was suspended – it was not suspended.
- It is clear from the correspondence that NHSBSA did not have her correct address on its database. There was a clear lack of communication between the Health Authority and NHSBSA. As a consequence, she has suffered a loss of interest on the arrears.
- When her pension was calculated in 2012, her GMP was not taken into account.

22. I have carefully considered Mrs G's response to the Adjudicator's Opinion and set out below my comments.

- Mrs G did not start to draw her State Pension until 2012, therefore her GMP could not be backdated to 2006. The reason for this is because the GMP represents her pension under State Earning Related Pension Scheme (SERPS) which she had given up as a result of the Scheme being contracted out of SERPS. If her pension had remained in SERPS, it would not be payable until she took her State Pension.
- Equiniti had told Mrs G, in its letter in April 2015, that NICO had confirmed that her GMP was suspended between 15 May 2006 and 15 April 2012. The reason why her GMP was suspended was because she had not asked to receive her State Pension until 2012.
- I do not doubt that had Mrs G known that she had deferred benefits under the Scheme, she would have drawn them earlier than she did. However, the fact that she did not is not NHSBSA's fault. NHSBSA says that it wrote to her in 1989 reminding her to claim her pension in 2006. It says that the letter was not returned so it assumed that she had received it. Mrs G says that she did not receive NHSBSA's letter, but she had informed her NHS employer of her change of address. NHSBSA are not at fault that Mrs G did not receive the letter it sent her in 1989. While I accept that she may have informed her NHS employer of her new address, this does not mean that NHSBSA would have been aware of it.
- When her pension was first calculated in 2012, it would have been based on her pensionable salary and pensionable service at November 1987. It was only in 2014 that Equiniti was informed by NICO of her GMP. As soon as Equiniti became aware of her GMP, her pension was increased up to the level of the GMP and backdated. Equiniti should have only backdated the increase to 2012 and not 2006.

23. Therefore, for the reasons given above, I do not uphold Mrs G's complaint.

Karen Johnston

Deputy Pensions Ombudsman
28 July 2017