

## Ombudsman's Determination

Applicant	Mr T
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	East Lancashire Hospitals NHS Trust ( <b>the Trust</b> ) NHS Business Service Authority ( <b>NHSBSA</b> )

## Outcome

1. Mr T's complaint against the Trust and NHSBSA is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld the Trust should pay Mr T £750 compensation in recognition of the clear distress and inconvenience which he has experienced in having to deal with this matter.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr T complains that the Trust and NHSBSA failed to inform him on a timely basis that he would lose his Special Class Status (**SCS**) in the Scheme, on transfer from a nursing to a managerial role and that the benefits available to him on retirement would consequently be lower than those which he had expected to receive. In order to put matters right, Mr T would like to be paid the higher retirement benefits originally quoted.

## Background information, including submissions from the parties

4. Mr T joined the Scheme on 5 May 1987 as a non-contributory member. He began paying contributions into the Scheme on 6 April 1988, but did not gain SCS until 5 May 1993 when he became a nursing auxiliary. Members of the Scheme with SCS have a Normal Pension Age (**NPA**) of 55.
5. On 2 June 1993, Mr T commenced working for the Trust in a nursing role which also qualified for SCS in the Scheme and the Trust notified NHSBSA of this accordingly.
6. Mr T became a trainee support officer in November 1998 and was promoted to a senior operating department support worker in July 2001. This role was reclassified as an operating department senior support worker co-ordinator in 2005 by the Trust.

7. NHSBSA says that all NHS employers were informed:
  - around 1988 that it was possible for some Scheme members to retain SCS on transfer from a nursing to managerial post; and
  - in 1995 that SCS was no longer available except for those members who already held the status and continued to work in a nursing capacity where a nursing qualification was required.
8. NHSBSA also say that:
  - until January 2015, it has no record of the Trust notifying it that Mr T had switched roles or enquiring whether the loss of SCS had affected the benefits available to Mr T on retirement; and
  - consequently all benefit quotations produced after this failure continued to incorrectly show that Mr T could retire at 55 with unreduced benefits in the Scheme until it amended its records to show that he no longer had SCS.
9. In February 2015, NHSBSA received from the Trust, via the pension on-line (**POL**) system, Mr T's application dated 23 January 2015 for his benefits to be paid from 17 May 2015. The application form AW8 showed that Mr T was a "manager" and the reason for his retirement was "age", i.e. an entitlement to unreduced benefits.
10. The POL system incorrectly accepted this application because at the time NHSBSA were still looking into Mr T's SCS and had not yet therefore amended its records.
11. In its letter 6 March 2015, the Trust informed Mr T that:
  - NHSBSA had told it that the benefits available to him on retirement would be different from those shown on the quotation previously supplied; and
  - NHSBSA had sent it a new quotation which it would forward to him on receipt
12. NHSBSA sent the revised quotation to the Trust on 6 March 2015 with a covering letter which said that its records had now been updated to show that Mr T no longer had SCS.
13. The Trust says that it cannot prove that it received this quotation because it do not have a copy of it on file and Mr T contends that he did not receive it in the post.
14. Mr T decided to proceed with his retirement and in June 2015, NHSBSA informed him that he would be entitled to a pension of £7,782.33 pa from 18 May 2015 and a tax free lump sum of £25,253.47.
15. Mr T asked NHSBSA, via the Trust, about the loss of his SCS. NHSBSA replied that if he made a successful retrospective application for SCS it would recalculate his retirement benefits.

16. NHSBSA rejected Mr T's application in July 2015 because it established from the job description provided by the Trust for his co-ordinator role that a nursing qualification was not necessary for it. Mr T consequently did not meet an essential criterion to qualify for SCS.
17. Mr T's appeal against this decision was considered under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). NHSBSA dismissed his appeal at both stages, but discovered during the procedure that it had made an error calculating the amount of his non-contributory membership in the Scheme.
18. NHSBSA recalculated the retirement benefits available to Mr T and in May 2016 informed him that:
  - his correct tax free lump sum was £24,838.84 and he had therefore been overpaid by £414.63;
  - his correct pension was £7,654.56 pa and he had been overpaid £125.49 (net) for the period 18 May 2015 to 23 May 2016; and
  - he should reimburse the overpayment totalling £540.12 to the Scheme.
19. NHSBSA awarded Mr T a goodwill compensation payment of £500 in recognition of the distress and inconvenience caused to him by its mistake and he used this to partially cover the amount which he owed to the Scheme.
20. Mr T subsequently returned to work for the Trust on a part time basis in a different role. He says that:
  - he could not ask for his old job back because it no longer existed following a restructure of the roles by the Trust;
  - he would not have retired if he had received details of the reduced benefits from NHSBSA before his retirement date; and
  - he did not consider it necessary to seek reinstatement because he had always received pension quotations showing that he could retire at 55 with an unreduced pension in the past and he was also told that this matter would be resolved before he retired.
21. The Trust says that:
  - the full review and restructure of the roles did not occur until August 2015;
  - Mr T's post was changed to a "cross site" role but, at the time of his retirement in May 2015, it had not made a final decision as to its full remit;
  - Mr T's replacement only started working for the Trust in August 2015;
  - Mr T therefore had an opportunity to seek reinstatement and continue working at his previous grade;

- if Mr T had approached it, it would have given him the opportunity to accept or decline this restructured role in line with its consultation process; and
- it did not discuss this new role with Mr T because he had already decided to retire and return to part time work on a lower banding with it.

## **Adjudicator's Opinion**

22. Mr T's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trust. The Adjudicator's findings are summarised briefly below:

- he had some doubts as to the reasonableness of Mr T relying on original benefit estimates, and did not consider that Mr T had acted to his financial detriment based on a reasonable belief that the figures were correct;
- he did not consequently consider that the Trust should compensate Mr T for any actual financial loss Mr T has suffered as a result of the incorrect quotation; and
- it was his view that the Trust's mistakes have caused Mr T distress and inconvenience to a degree which warrants a compensation payment of £750.

## **Ombudsman's decision**

23. Mr T and NHSBSA accepted the Adjudicator's Opinion but the Trust did not provide a response. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above.
24. The evidence is clear that NHSBSA had for many years provided Mr T with incorrect benefit statements. NHSBSA were reliant on the Trust to notify it as soon as possible of any change in Mr T's circumstances such as his roles and SCS in order to calculate his benefits correctly.
25. NHSBSA says that it kept all NHS employers, including the Trust, informed about the evolving criteria which had to be met by Scheme members in order to retain SCS over the years, and I have no reason to dispute its statement.
26. When Mr T transferred from a nursing to a managerial role, I am satisfied that the Trust had been made reasonably aware that it had to notify NHSBSA of this role change. Its failure to do so was the critical reason for the erroneous benefit statements subsequently being issued by NHSBSA to Mr T.
27. Mr T should have been given the correct figures and I consider the mistakes made by them flow from maladministration on the part of the Trust.

28. However, this finding, in itself is not enough to enable me to uphold the complaint. Although Mr T received incorrect details of the retirement benefits, it does not confer on him a right to the benefits erroneously quoted. Before I could uphold the complaint that the February figures should be honoured Mr T would have to show that he acted to his detriment based on the reasonable belief that the figures were correct, and it was foreseeable that he would do so. The Trust can be expected to have realised that Mr T was likely to take a decision based on the information provided to him by NHSBSA, the accuracy of which depended on them telling NHSBSA he had moved from an SCS eligible role. It was foreseeable that someone in Mr T's position would rely upon them. However I am not persuaded that he can prove that they were the cause of his decisions or that it was reasonable for him to decide to retire in reliance on the February figures.
29. I am accept on the balance of probabilities that had Mr T not received the incorrect information he may not have made his initial application to retire.
30. However the Trust informed him in March 2015, before his planned retirement date, that NHSBSA were recalculating his retirement benefits and that it would receive a revised benefit quotation for onward transmission to him in the near future. Therefore by March, Mr T was aware that the benefits available to him would be different to those provided in February 2015. At that point there was still time for him to have adjusted his plans.
31. Mr T contends that it was only in June 2015 that he first became aware that his actual retirement benefits were lower. I accept that this is when he actually became aware of the extent of the difference, but at that time the Trust had not yet appointed his replacement and it was therefore still open to him to mitigate any financial loss which he perceived by seeking reinstatement to his old role, or one at a similar grade within the restructure.. Instead he chose to retire and to take a less responsible part time role. I therefore do not think he can prove that he would not have retired had he known the correct figures and I do not consider that he took all the steps which could reasonably have been taken to mitigate any loss which he perceived he might incur. Consequently, I do not consider that Mr T can show a loss flowing directly from reasonable reliance on the February benefit illustration.
32. However, the discovery that his pension was to be significantly less than he expected will have caused Mr T significant distress and inconvenience. My awards in relation to distress and inconvenience, however, are modest (generally in the region of £500 to £1,000) and are not intended to punish the respondent. It is my view that the Trust's mistakes have caused Mr T distress and inconvenience to a degree which warrants such a payment from it.
33. I therefore consider that this complaint should be partly upheld against the Trust and make an appropriate direction below.

**Directions**

34. Within 14 days of the date of this Determination, the Trust shall arrange to pay Mr T compensation of £750 in recognition of the distress and inconvenience caused to him.

**Karen Johnston**

Deputy Pensions Ombudsman  
20 July 2017