

Ombudsman's Determination

Applicant	Mrs Christine Harris
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Pensions

Subject

Mrs Harris complains that:

- She was not informed that she should have stopped paying contributions when she attained maximum Scheme membership on 23 December 2004.
- She was denied the opportunity to take her maximum pensionable benefits from the Scheme with effect from 23 December 2004 following which she would then have been able to take a break in service before returning to work on a part-time basis.

The Ombudsman's determination and short reasons

The complaint should be upheld against NHS Pensions on the basis that it was not unreasonable that Mrs Harris took no action to mitigate her losses in December 2008. However I consider that Mrs Harris could reasonably have been aware that she could take her pension without prejudicing her complaint by March 2010 and so could have mitigated her losses from that date.

Detailed Determination

Material Facts

1. Mrs Harris was born on 24 December 1944. She worked for the National Health Service from December 1969 to March 2011, working part-time between 1984 and 1996, and was a member of the Scheme throughout her service.
2. Mrs Harris was a mental health officer (**MHO**) and so a member of the “special classes”. She was therefore entitled, under the National Health Service Pension Scheme Regulations 1995 (**the Regulations**), to have service over 20 years as a mental health officer reckoned as double for pensionable purposes.
3. Part-time service counts for the purposes of the definition of pensionable service on the basis of time in post. However, when it comes to calculating benefits its whole time equivalent is used under Regulation R5. (So, for example, a year of half-time pensionable service counts as half a year for the calculation of pension.)
4. As a member with MHO status, Mrs Harris was able to retire at any time after age 55, taking immediate benefits earned to the date of retirement without any actuarial reduction.
5. Regulation C2(3) provides that benefits are not to be calculated by reference to more than 45 years' pensionable service and that, in the case of a person with MHO status, the maximum pensionable service allowable before age 55 is 40 years.
6. Where a member has more than 45 years' pensionable service, the years by reference to which benefits are to be calculated are to be those that are most advantageous.
7. Under Regulation D1(3) in relation to those with MHO status, contributions are not to be paid once the member has completed 45 years' pensionable service and has passed age 60. Pay after that point is disregarded for the purpose of the calculation of benefits (**Method 1**).
8. Regulation R3(7)(c) provides for an alternative calculation where a member with MHO status has more than 45 years' pensionable service. The benefits may be based on the whole period of service, excluding any doubled service resulting from MHO status, and final pay on actual retirement. That is, however, subject to the member making up contributions as if they had not stopped on completion of 45 years and reaching age 60 (**Method 2**).

9. Regulation S1 contains provisions about suspension of a pension in payment on re-employment in the NHS, which do not apply if there has been a break of more than a month. Regulation S2 contains provision for reduction of pensions in payment to persons under 60 who return to NHS employment, regardless of the length of any break.
10. The overall effect of the Regulations as they affected Mrs Harris' potential retirement was:
 - (a) Mrs Harris could have retired at any time on or after age 55 on 24 December 1999 with immediate benefits accrued to date and no actuarial reduction;
 - (b) if Mrs Harris' doubled service as a MHO was to be used in the calculation of benefits under Method 1 then:
 - no service after she completed 45 years (in December 2004) would count for pension;
 - any increase in pensionable pay after completing 45 years and before age 60 would potentially count for pension purposes - increases after age 60 would not;
 - (c) contributions would have ceased at age 60;
 - (d) if Mrs Harris stayed in service after age 60 then the Method 2 calculation could in theory have been used - but it was exceptionally unlikely to have been better than Method 1 because of the amount of doubled service in the Method 1 calculation.
11. On 22 July 2004 Mrs Harris' employer, Royal Devon & Exeter Healthcare Trust (the Trust), wrote to Mrs Harris in connection with the requirement to complete an age exemption certificate for National Insurance purposes if she intended to continue working after age 60. A handwritten note on the letter indicates that Mrs Harris returned the completed certificate on 6 September 2004.
12. Mrs Harris reached age 60 on 24 December 2004. However no steps were taken for payment of her contributions to cease.
13. In January 2005 NHS Pensions sent Mrs Harris a statement of her estimated benefits, stating that her membership had been restricted to 45 years. Between January 2007 and October 2008 several estimates of benefits were generated by the Trust using the Pensions Online facility. All of the statements showed that Mrs Harris' membership had been restricted to 45 years and in addition the statement generated on 19 July 2007 stated "We are restricting your service to 45 years

because the maximum qualifying service allowed is ... 45 years overall. Contributions must cease once 45 years' service has been achieved providing the member is at least 60".

14. On 27 November 2008 NHS Pensions wrote to the Trust and said that having reviewed its records they had identified that Mrs Harris was subject to membership restriction and therefore contributions should have stopped on 23 December 2004.
15. The Trust advised Mrs Harris on 15 December 2008 and the overpaid contributions, amounting to £7,227.37, were refunded in January 2009. Interest of £763.89 was later paid in September 2009.
16. Mrs Harris wrote to NHS Pensions on 26 January 2009 and said that had she known the correct position she would have worked part-time rather than full-time. Mrs Harris also asked for her pension to be calculated based on her current salary and with 45 years' service.
17. On 11 February 2009 the Trust wrote to Mrs Harris. The letter refers to an application for retirement benefits made by Mrs Harris. Mrs Harris says that she has no knowledge of this.
18. NHS Pensions responded to Mrs Harris' letter of 26 January 2009 on 9 March 2009 and explained that, as she had achieved 45 years maximum service, in accordance with the Scheme Regulations, her contributions must cease and no further membership could be accrued and therefore her benefits could not be calculated as she wished.
19. Mrs Harris instigated Stage 1 of the Scheme's Internal Dispute Resolution Procedure (IDRP) and the IDRP 1 decision maker provided his response on 24 August 2009 as follows:

"We have acknowledged that mistakes have been made in handling your NHS pension and we have apologised that you were not previously advised when you would achieve maximum membership...There is no provision that would allow us to pay benefits to which a member is not entitled..."
20. Mrs Harris continued to work and on 7 September 2009 she wrote to her employer and said "I have just completed my application to work on beyond 65 yrs. Because of the situation, I have requested to work Full-time until my Pension problems are resolved. I would then intend to continue Part-time or job sharing on a flexible basis..."

21. Mrs Harris submitted an application to the Trust in November 2009 to extend her employment past her 65th birthday. Mrs Harris' application was accepted and the Trust agreed to support her application to continue working until 23 December 2010.
22. Mrs Harris then approached UNISON for assistance. In response to a letter, dated 26 November 2009, UNISON wrote to Mrs Harris, on 7 December 2009, saying that they would draft a Stage 2 IDRPs appeal on her behalf. UNISON's letter said:

“The Pensions Section has advised that:

There is potential merit in pursuing Christine Harris's complaint because there appears to be the real possibility that she has lost out on 4 years' worth of pension payments because of incorrect information provided to her. Furthermore the loss is compounded by the fact that she's continued to work full-time whereas she could potentially have made life a little easier for herself by working part-time and bringing her pension into payment...

The general legal remedy for mistake cases is to try to put the individual back in the position they would have been in had the mistake not occurred in the first instance, with compensation potentially payable for any loss that the mistake has resulted in...”

23. Mrs Harris responded to UNISON on 31 December 2009. In her letter she said:

“My Employers and Managers are aware of the situation and I will continue working full-time for the present. I have been forced into this position by the total lack of co-operation by the Pensions Agency to resolve matters. There is no way I can accept the position that they have created and expect me to accept. I hold them entirely constructively responsible for me not being able to apply for my pension from reaching age 65 years on 24.12.09. The only option that I can see open to me, with advice from your Solicitors, may be to use Method One as a basis from age 65 years plus. To take the pension without prejudice to my claim for any relevant backdating of the pension to 2004. I would only enter into this with firm legal advice and representation. It would however enable me to reduce my work to part-time...”

24. There was further correspondence between Unison and Mrs Harris during January 2010 and on 21 January 2010 UNISON sent Mrs Harris a draft Stage 2 IDRPs letter.
25. Mrs Harris responded to UNISON on 25 January 2009. In her letter she said “I am currently placed in an impossible position with my Pension issue unresolved, forcing me to work beyond 65yrs full time an outcome. I will then revert to part-time, job sharing for a while. Pro-rata I have in effect worked the past five years for no gain to

my Pension. Without the Pension I have worked full-time hours which means in effect I have been working for approx half my basic salary.”

26. UNISON submitted the Stage 2 IDR P appeal on Mrs Harris’ behalf on 1 February 2010.
27. The IDR P I decision was upheld at IDR P 2 on 31 March 2010.
28. Mrs Harris continued to work and submitted a second application to continue working until December 2011. This application was initially rejected but was later accepted on appeal in favour of a shorter extension to 31 March 2011. In her letter of appeal, dated 13 September 2010, Mrs Harris said “I have a complicated dispute with NHS Pensions Agency regarding my pension...”
29. Mrs Harris wrote to NHS Pensions on 29 December 2010 and said “I have tried to get a resolution to these matters via IDR stages 1 and 2 without result. I now find myself being forced into the position of accepting my pension being based on details at age 60 years...I do not accept the position taken by the Pensions Agency in this matter...”
30. Mrs Harris’ benefits were put into payment effective from 31 March 2011 based on her salary at 23 December 2004 and using 45 years’ service, with RPI index linking to age 65. Mrs Harris’ benefits consisted of an annual pension of £12,799.85 and a lump sum of £38,399.55.

Mrs Harris’ initial submissions

31. She received no notification to inform her that she had reached 45 years maximum service at age 60. She had no reason to doubt that the information she had been given was other than correct.
32. NHS Pensions should have initiated the action to inform the Trust to stop deducting contributions.
33. She requested retirement estimates in 2007 to update herself and also because she had suffered a period of ill health and there was a possibility she might retire earlier than previously expected.
34. Had she known the correct position she would have worked part-time and claimed her pension from age 60.
35. She rejects NHS Pensions’ claims that she requested an AW8 form in October 2008 or that she indicated an intention to retire in March 2009.
36. Her husband has no recollection of discussing her pension with NHS Pensions - only of stating that her pension should be backdated for the period 2004-2008.

37. Her loss amounts to £30,000 and in addition she was denied access to her lump sum payment in 2004 when her son was at University and she could have utilised the money to fund his further education.
38. She did not take her pension in 2009 because she was in dispute with NHS Pensions. Had she been aware of the protracted period of her dispute she probably would have taken her pension earlier than she did.
39. She did not receive any advice from UNISON regarding taking her pension before the dispute was resolved or whether it would prejudice her position. She made every reasonable attempt to gain advice and guidance from UNISON. She would not have considered taking her pension unless she had been given legal advice that it would not prejudice her claim. She should not be penalised for the omission of others.
40. It was not as simple as taking the pension with nothing resolved. There were several issues concerning how the pension was to be assessed. It was not until 31 March 2010 that the IDR P 2 decision was known.

NHS Pensions' initial submissions

41. Mrs Harris' employer confirmed in October 2008 that Mrs Harris had requested an AW8 retirement benefit application form and that she planned to retire on 31 March 2009. They confirmed she had more than 40 years' service.
42. NHS Pensions acknowledge that the retirement estimates were incorrect and that the pension contributions were deducted in error. However, the contributions have been returned to Mrs Harris and interest has been paid.
43. NHS Pensions have acknowledged that Mrs Harris has been caused distress and inconvenience and have offered Mrs Harris a compensatory payment of £300.
44. Correct information was given to Mrs Harris in December 2008. It was also explained in a telephone conversation with Mr Harris that her benefits could be paid immediately. Retirement benefit forms were issued to Mrs Harris' employer in February 2009 with the intention she would retire in March 2009. Mrs Harris continued to work in a non-pensionable capacity, seeking a further extension to her contract until December 2011.
45. Mrs Harris maintains that she has worked 4 years longer than she was required to, but states that it never crossed her mind to retire in 2008. She says she did not know what the position was in early 2009 but she has always had the opportunity to retire from her normal retirement age and whilst she remained in NHS employment she benefitted from her full-time salary and death in service benefits.

NHS Business Services Authority v Leeks & Ors [2014] EWHC 1446 (Ch)

46. Mrs Harris brought her complaint to the Pensions Ombudsman Service in November 2011. However the investigation into her complaint was placed on hold pending the outcome of the appeal in *NHS Business Services Authority v Leeks & Ors (Leeks)*.
47. The facts in *Leeks* are similar to those in Mrs Harris' case in that Mrs Leeks was also a MHO for the National Health Service. When she reached age 60 she had acquired a full accrual, yet the scheme continued to accept her contributions. She complained that had she been aware of her rights, she would have retired at age 60 rather than continue to work.
48. When the error was identified in March 2009, the excess contributions were refunded, however Mrs Leeks continued to work nonetheless. Mrs Leeks complained to my office that she should have had the opportunity to retire with maximum pensionable benefits and she should then have been able to take a break in service before returning to work on full pay.
49. I found that the complaint should be upheld against NHS Pensions, because Mrs Leeks was not informed that she should have stopped paying contributions to the NHS Pension Scheme in 2007, and accordingly she was denied the opportunity to take her benefits while remaining in work after a break. I directed NHS Pensions to pay the total of the instalments of pension which would have been paid to Mrs Leeks, in the event that she had brought her benefits into payment on 10 January 2007, from that date until the date of calculation, less the net monthly salary Mrs Leeks received during January 2007 plus interest at the same rate from January 2007 to the date on which the payment is made.
50. NHS Pensions appealed to the High Court relying on a number of grounds. They submitted that I had erred in law as follows:
- (1) in finding that there had been maladministration by NHS Pensions; alternatively
 - (2) in directing NHS Pensions to pay compensation for the maladministration found; alternatively
 - (3) in directing NHS Pensions to pay compensation beyond March 2009; and further or alternatively
 - (4) in not directing the Employer to pay all or at least some of any compensation found to be due.
51. The Appeal was dismissed on all grounds. Sales J found that:
- (1) "...the Authority's [NHS Pensions] failure to inform Mrs Leeks and its continued acceptance of her contributions in respect of her

pension were matters which I consider plainly justified the Pensions Ombudsman in making the finding of maladministration that he did. He did not have to make any more elaborate findings or rulings than he did.”

- (2) “The Pensions Ombudsman was plainly conscious of causation issues relating to the fact that Mrs Leeks did not resign from her employment when, in March 2009, she was given proper information about her pension entitlements. He examined her reasons for doing that and found that she had appropriate grounds specific to the circumstances in which she then found herself for not retiring at that stage and acted reasonably in declining to do so: see paragraph 79 of his decision. There was evidential material before him, including in the complaint form lodged by Mrs Leeks, which provided a proper and lawful evidential foundation for him to make those findings.”
- (3) “...the Pensions Ombudsman was entitled on the evidence before him to make findings that had Mrs Leeks been properly informed about the position as she should have been in January 2007, she would have retired from her job but then, after a brief period, would have re-entered employment with the Employer. On the basis of those findings, the Pensions Ombudsman was entitled to make the findings that he did in relation to the continuing loss suffered by Mrs Leeks down to the date of his report.”
- (4) “...there was no error of law on the part of the Pensions Ombudsman in making the compensation ruling he did in favour of Mrs Leeks against the Authority.”

52. Following the Leeks case NHS Pensions made a settlement offer, which they have said took into account that the duty to mitigate is on the injured party and whether they have behaved reasonably in all circumstances once harm or injury has been sustained. In Mrs Harris’ circumstances the duty was on her to take all reasonable steps to minimise the loss she has suffered. This means that once she was provided with the information she should have been provided with earlier it would have been reasonable to expect her to act on that information.

53. On 28 July 2014 NHS Pensions wrote to Mrs Harris setting out the compensation being offered to her. The letter acknowledged that Mrs Harris was seeking a remedy whereby her pension benefits are based on maximum 45 years membership and her salary at the time of her retirement in March 2011. NHS Pensions explained its offer as follows and concluded that a negative decision from Mrs Harris would result in the offer being rescinded:

- NHS Pensions is not in a position to provide the full remedy being sought as it falls outside the calculation methods provided for in the Scheme

Regulations. There is no facility in the Regulations to pay benefits until a member formally retires by taking at least the requisite 24 hour break.

- Mrs Harris' suggested remedy would go against the Ombudsman's normal stance to put an individual in a position they would have been in but for the maladministration. Further Mrs Harris' remedy would place her in a more favourable position than if she had successfully taken her complaint to the courts.
- On the strength of Mrs Harris' representations, she would have affected the requisite employment break in compliance with the Regulations before returning to work in the NHS after her retirement.
- NHS Pensions is proposing to pay, as a lump sum, the total instalments of pension Mrs Harris would have been paid between 24 December 2004 and 18 December 2008, in the event that she would have brought her NHS benefits into payment on 24 December 2004.
- The 18 December 2008 date is important as this is the date NHS Pensions discussed Mrs Harris' retirement and re-employment with Mrs Harris' husband. It is at this point that Mrs Harris was made aware of the true position and therefore had a legal duty to take reasonable steps to minimise or mitigate her financial loss. Once provided with the correct advice it was reasonable for her to take advice and act on that advice.
- There is evidence that Mrs Harris was about to mitigate when her employer notified NHS Pensions of her intention to retire at the end of March 2009. In the end Mrs Harris chose not to retire and continued with her employment until March 2011 and her eventual retirement.
- NHS Pensions intends to pay interest on the pension equivalent instalments to the date those instalments are calculated. The calculation date will be 28 days from the date Mrs Harris notifies NHS Pensions of her net monthly salary between 24 December 2004 and 23 January 2005 and details of her tax position from 23 January 2005 to 18 December 2008. From the calculated amount NHS Pensions intends to deduct the amount of Mrs Harris' net salary and add interest calculated at the same rate from 23 January 2005 to the date of calculation.
- Equiniti Paymaster on behalf of NHS Pension has confirmed that had Mrs Harris' pension been placed into payment on 24 December 2004, that by 18 December 2008, then the accumulated net instalments would have come to £42,854.28, based on Mrs Harris paying basic rate tax. The estimated

interest is £5,344.85. An estimate of Mrs Harris' net salary plus interest would be £2,062.59. Therefore the estimated net compensation would be £46,436.54.

54. On 23 August 2014 Mrs Harris rejected NHS Pensions' offer for the following reasons:

- The offer does not compensate her for the period from December 2008 until March 2011. Therefore it does not restore her lost pension entitlement for the entire period. This loss was due entirely to the actions of NHS Pensions in forcing her to instigate the IDRP and to bring her complaint to this Office.
- Her part-time service subsequently caused some difficulty in calculating her service to count towards her pension.
- Her employer was made fully aware of the problem at an early stage and in particular by a letter to the Chief Executive of the Trust in September 2009. She was advised from the beginning that the problem lay with NHS Pensions and she is not in a position to be involved in apportioning blame for the maladministration that ensued.
- She became aware of matters on 18 December 2008. She was shocked by the information and thought she had been mistaken for someone else. She was so upset she passed the telephone to her husband but he has no recollection of discussing her retirement only of stating that her pensions should be backdated to December 2004.
- At no point did she intend to retire in March 2009. At that time she was in dispute with NHS Pensions and seeking advice on how to pursue her complaint. The pay department must have misunderstood.
- She eventually retired on 31 March 2011 and that was forced on her by the Trust and was age related.

Mrs Harris' further submissions in relation to NHS Pensions offer

55. As soon as she became aware of the problem with her pension she contacted both her local NHS pay and pensions' office and NHS Pensions. It was made clear to both that she did not accept the position and that she considered she should be compensated for the non-payment of her pension from December 2004. It was also made clear that she was not accepting the method being used to calculate her pension.
56. She had no idea at the outset how long it would take to resolve. It had been her intention before the problem to retire at age 65 and return on a job sharing or part-time basis. She had to apply for an extension of service beyond age 65 and 12

months was granted. She continued full-time in the reasonable expectation that the complaint would be dealt with.

57. The response to IDR2 was not received until March 2010 following which a number of enquiries ensued and progress became very slow. At the end of 2011 she had to apply for a further extension which was granted but only to March 2011. She was then forced to take her pension albeit her complaint had not been resolved.
58. She made a more direct effort to clarify her position than was the case for Mrs Leeks. Otherwise she was in an identical position, perceiving to accept her pension at that point would be prejudicial. The main difference was that she was in dispute with NHS Pensions over the method of calculating her pension.
59. It is NHS Pensions who are fully to blame for the maladministration. In simple terms if she was entitled to her pension at age 60 then she is entitled to it for the entire period until her enforced retirement.
60. NHS Pensions' offer does not compensate her for the 2 years 3 months from December 2008 to March 2011. Compensation for this period would be in the region of £30,000.

Conclusions

61. Mrs Harris' complaint arose because of the joint consequences of completing 45 years pensionable service and reaching age 60. The consequence of these events was that Mrs Harris stopped earning additional years' service that counted towards her benefits from the Scheme when she reached the 45 year maximum in late 2004. Coincidentally, Mrs Harris also reached age 60 in December 2004 and continuing to contribute to the Scheme was of no benefit to her because her pension could not take into account any higher pay she received after reaching 60.
62. NHS Pensions were aware that Mrs Harris would achieve 45 years' pensionable service (taking account of her period of double entitlement) when she reached age 60 on 24 December 2004. It stated this in its estimate in January 2005 and in several more estimates between January 2007 and October 2008.
63. However, NHS Pensions did not identify until 27 November 2008 that Mrs Harris' contributions should have ended immediately before her 60th birthday, on 24 December 2004, as she had achieved the maximum calendar service under the Scheme rules at the same time.
64. At the outset Mrs Harris' complaint was that she was denied the opportunity to take her maximum pensionable benefits from the Scheme with effect from 23 December 2004. NHS Pension do not dispute that an error was made and have stated in their

initial submissions to my office that they “acknowledge that the retirement estimates were incorrect and that the pension contributions were deducted in error.”

65. It is common ground that Mrs Harris would have affected the requisite employment break in compliance with the Regulations before returning to work in the NHS after her 60th birthday and there is no dispute that NHS Pensions’ error has caused injustice to Mrs Harris for the period from 24 January 2005 to 18 December 2008.
66. The dispute that has arisen latterly is over the amount of redress that has been offered to Mrs Harris by NHS Pensions. Mrs Harris considers that, as in the case of Mrs Leeks, she should be compensated up to the date of her actual retirement. Whereas NHS Pensions argue that she should only be compensated up to the point she was given proper information i.e. 18 December 2008.
67. I have therefore considered the actions Mrs Harris took to address her circumstances once she was fully aware of the correct position in December 2008 and whether those actions amounted to a failure to take reasonable steps in mitigation. If they were then she would not be entitled to redress for any additional losses after that date.
68. NHS Pensions argue that the duty fell on Mrs Harris to take all reasonable steps to minimise the loss she has suffered. They say that once she was provided with the correct information it would have been reasonable to expect her to act on that information. Mrs Harris says that she did not take her pension benefits before her eventual retirement in March 2011 because she did not want to prejudice the outcome of her complaint.
69. When Mrs Harris first discovered the error her actions do not appear unreasonable. It is understandable for her not to have taken her pension because of a perceived risk that doing so would jeopardise her case whilst her dispute with NHS Pensions remained unresolved. She made this clear on several occasions; in her written correspondence with NHS Pensions, with her employer and also her union representative.
70. I cannot see that NHS Pensions ever said to Mrs Harris that she could have put her benefits into payment without prejudice to the outcome of the complaint. Although NHS Pensions was under no obligation to advise Mrs Harris that she could have taken her pension it would certainly have strengthened their mitigation related arguments if they themselves had told her in 2008 that taking her pension was unlikely to prejudice the outcome of her complaint.
71. However, whilst in my view NHS Pensions might have mentioned to Mrs Harris in 2008 that taking her pension was unlikely to prejudice the outcome of her complaint I see that by December 2009 Mrs Harris was considering taking her pension once

she had received legal advice. In her letter of 31 December 2009 to her union she said “The only option that I can see open to me, with advice from your Solicitors, may be to use Method One as a basis from age 65 years plus. To take the pension without prejudice to my claim for any relevant backdating of the pension to 2004. I would only enter into this with firm legal advice and representation. It would however enable me to reduce my work to part-time.”

72. Mrs Harris says she did not ever receive a response to that from her union. She says that although she asked her union for legal advice this was not forthcoming and contends that she should not be penalised for the omission of others. However, it is clear that at that point Mrs Harris thought that taking the pension on a without prejudice basis was an option. She asked for advice (albeit indirectly) but did not receive it. She says that is not her fault – but it is certainly not NHS Pensions’ fault. She, on the other hand, could have pursued the matter with her union.
73. If she had received advice from her union, or failing that had sought independent legal advice, it would most certainly have been that she could take her pension without harming her claim. In my judgment had Mrs Harris received that advice she could reasonably have known by end of February 2010 that putting her pension into payment was unlikely to prejudice the outcome of her complaint. I therefore consider that the relevant date when it would have been reasonable to have expected Mrs Harris to have put her pension into payment was 1 March 2010.
74. Mrs Harris says that matters were not so simple that she could simply take her pension with matters unresolved. She argues that there were several issues concerning how the pension was to be assessed and that she did not have a final decision until 31 March 2010. But those were side issues to the central matter of not being notified that accrual had stopped in 2004 – and they were not matters about which she had a complaint that was justifiable.
75. Mrs Harris’ position was similar to Mrs Leeks’ in that the central issue was the same. But inevitably the matter of mitigation depends on individual circumstances. In my view a reasonable person in Mrs Harris’ shoes would have known in February 2010 that she could take her pension without harming her case
76. The overall loss in pension terms amounts to the sum of the instalments of pension which would have been paid to Mrs Harris between 24 December 2004 and 28 February 2010. There is no loss of lump sum benefits as the lump sum paid to Mrs Harris (£38,399.55) in March 2011 was a greater amount than in December 2004 (£37,294.50).
77. However, in order to receive her pension at age 60 Mrs Harris would have had to resign her post and, after a 24 hour gap, not work more than 16 hours a week in the following month and in order to effectively return her to the financial position she

would have been in, my direction below makes an adjustment for one month of her salary at the January 2005 level - on the assumption that she would not have worked at all in that month, since she would normally have worked more than the minimum 16 hours.

78. NHS Pensions' maladministration has led to Mrs Harris suffering a financial injustice for which she should be compensated. My direction below is that she be made a lump sum payment not as a benefit under the Scheme, but by NHS Pensions as compensation for the loss of the equivalent amount of benefit caused by maladministration.
79. I also consider that Mrs Harris has been caused unnecessary distress and inconvenience in resolving the matter. I consider the £300 offered by NHS Pensions to be adequate redress.

Directions

80. I direct that within 28 days of Mrs Harris notifying them of her net monthly salary for January 2005, NHS Pensions is to calculate the total of the instalments of pension which would have been paid to Mrs Harris, in the event that she had brought her benefits into payment on 24 December 2004, from that date until 28 February 2010. It is also to calculate simple interest on the instalments from the due date to the date on which it makes payment at the base rate for the time being payable by the reference banks. From that sum it may deduct an amount equal to the net salary notified, plus simple interest at the same rate from January 2005 to the date on which the payment is made.
81. I direct NHS Pensions to pay Mrs Harris the amount so calculated.
82. I further direct NHS Pensions to pay Mrs Harris £300.

Tony King

Pensions Ombudsman

6 February 2015