

Ombudsman's Determination

Applicant	Mrs H
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. Mrs H's complaint against NHS BSA 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) NHS BSA will pay £1,000 directly to Mrs H to recognise the significant distress and inconvenience it has caused her.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs H has complained that, due to misinformation given by NHS BSA since 2001, she was incorrectly led to believe that she qualified for Mental Health Officer (**MHO**) status, and that she was entitled to unreduced benefits from the Scheme at age 55.

Background information, including submissions from the parties

4. In 1997, Mrs H began employment with the NHS. In 1998, Mrs H joined the 1995 section of the Scheme. At this time she also transferred in her benefits from a private employer's pension scheme, linked to her former employment with a non-NHS mental health establishment, within which she had MHO status. When her former scheme transferred Mrs H's benefits to the Scheme, it secured additional benefits within the Scheme, representing 14 years and 205 days' service.
5. In 2007, Mrs H was told that she was not eligible to purchase additional years, as she had already exceeded the maximum service, however this was based on the inclusion of double years for MHO status.
6. In 2008, Mrs H was sent a membership statement confirming that she had MHO status.

7. In 2011, Mrs H was sent a statement that showed 14 years 205 days transferred in membership, and 8 years 364 days whole time equivalent membership. There was zero MHO doubled membership on this statement.
8. In June 2015, NHS BSA wrote to Mrs H in response to her queries over the MHO status. NHS BSA explained that MHO status was abolished in 1995. As Mrs H joined the scheme in 1997 she did not qualify for MHO membership.
9. Mrs H complained about the misleading information she had received for several years from the Scheme and NHS BSA. She said, because of the misinformation, she was denied the opportunity to top up her pension by purchasing additional years. As a result, Mrs H has said that she could no longer retire in 2017 at age 55 with MHO status, and will have a pension shortfall when she does retire.
10. In 2016, NHS BSA issued stages one and two of the Scheme's internal dispute resolution procedure (**IDRP**) decision letters. In summary these said:
 - Mrs H does not qualify for MHO status as she joined the Scheme after the status was abolished.
 - It acknowledged it had provided Mrs H with misinformation.
 - At age 60 Mrs H will have accrued 39 years and 43 days, which means she could have purchased an additional 322 days' membership within the Scheme, when making enquires in 2007. This would have been at a cost of 1.31% of Mrs H's pensionable salary.
 - The complaint that Mrs H should be awarded MHO status was not upheld.
 - The misinformation complaint was upheld, and NHS BSA awarded Mrs H £500 to recognise the distress and inconvenience caused.
 - Mrs H was given the opportunity to retrospectively purchase the 322 days' additional service.
11. In her complaint to this Office, Mrs H and her representative have argued:
 - Mrs H was given the impression, by all the information received by NHS BSA over the years, that her service in the private sector had been recognised as MHO service within the Scheme.
 - On the information given by NHS BSA, Mrs H had missed the opportunity to purchase additional years.
 - Mrs H will not be able to retire at age 57 as she had planned, and will now have to work until age 60.
 - Mrs H has lost out on the value of her pension from age 57, and she will now be required to purchase additional pension benefits to make up the shortfall.

Adjudicator's Opinion

12. Mrs H's complaint was considered by one of our Adjudicators who concluded that NHS BSA should pay £1,000 to Mrs H to recognise the significant distress and inconvenience it caused her. The Adjudicator's findings are summarised briefly below: -
- It is not in dispute that NHS BSA provide the wrong information to Mrs H.
 - Mrs H's expectations would have been greatly raised by the misinformation.
 - Mrs H cannot receive benefits to which she is not entitled. As Mrs H joined the Scheme after the MHO status was abolished, she is not entitled to MHO status.
 - NHS BSA has given Mrs H the option to secure the additional 322 days, which takes her to the maximum service she could have obtained within the Scheme.
 - Given the significant period of time NHS BSA issued misinformation to Mrs H, an award of £1,000 is appropriate.
13. Mrs H and NHS BSA did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs H and NHS BSA provided their further comments which 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 H and NHS BSA for completeness.

Summary of Mrs H's further comments

14. NHS BSA repeatedly reassured Mrs H that the information was correct.
15. The award for non-financial injustice should be increased because of the inconvenience caused by Mrs H having to use funds earmarked for other purposes in order to secure the additional pension benefits.
16. Mrs H contacted a financial adviser in 2004 as she was considering securing additional pension in a personal policy. The misinformation given by NHS BSA meant that she did not pursue this avenue as she was assured that she could afford to retire at 57 due to the MHO status. Mrs H has been denied the opportunity to contribute to a private retirement fund since 2004 because of the misinformation.
17. A complaint was upheld by the Ombudsman in 2016 whereby it was determined that the member had changed her position and, as a result, was awarded redress and a non-financial injustice award of £500.

Summary of NHS BSA's further comments

18. Mrs H has submitted her application to purchase the additional years.

19. NHS BSA offered £500 to Mrs H in July 2016 to recognise the distress and inconvenience caused. NHS BSA feels that this was in line with similar Ombudsman Determinations at that time.

Ombudsman's decision

20. Mrs H has argued that she did not contribute to a personal pension because of the misinformation given to her and her adviser. Nevertheless, Mrs H has now been able to secure the maximum 40 years' service within the Scheme. Mrs H may have decided to contribute to a private pension, however there are many factors involved in making such a decision, and it is not possible to say that NHS BSA's administrative errors were the main factor in Mrs H's decision not to pursue this option.
21. Whilst Mrs H has not been able to take full retirement benefits early as she had hoped, this is a loss of expectation and not a change of position argument. Mrs H has been able to secure the maximum benefits possible within the Scheme. She has argued that she has had to use funds earmarked for another purpose, however she would always have had to purchase these additional years if she wished to secure the maximum level of service.
22. Mrs H has suffered a significant loss of expectation because of the long duration of the period of misinformation given by NHS BSA, and due to NHS BSA reconfirming the misinformation when challenged by Mrs H.
23. NHS BSA has said its offer of £500 was in line with similar Determinations issued by this Office at that time, however each case is decided on its own merits. I consider that NHS BSA did the right thing by offering Mrs H the chance to buy the shortfall in her accruals retrospectively. But she still has the inconvenience of having to find a significant lump sum in order to take up that offer. In the circumstances, I am satisfied that in Mrs H's case, a higher award is appropriate.
24. Therefore, I partly uphold Mrs H's complaint.

Directions

25. Within 28 days of this Determination, NHS BSA will pay £1,000 directly to Mrs H to recognise the significant distress and inconvenience caused to her.

Karen Johnston

Deputy Pensions Ombudsman
16 March 2018