

## Ombudsman's Determination

Applicant	Mrs N
Scheme	NHS Pensions Scheme (the <b>Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS Pensions</b> )

## Outcome

1. Mrs N's complaint against NHS Pensions 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 Pensions shall pay £500 to Mrs N for the significant distress and inconvenience caused to her by its maladministration.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs N's complaint against NHS Pensions is that she was told she could claim her pension credit benefits in full at age 55. When she applied to take the benefits, she was informed that they were subject to an actuarial reduction.

## Background information, including submissions from the parties

4. In July 2007, Mrs N was awarded a pension credit in respect of her ex-husband's pension in the Scheme. She and her ex-husband both held Mental Health Officer (**MHO**) status.
5. On 26 July 2007, NHS Pensions wrote to Mrs N, saying that the pension credit benefits would be payable from age 60 and she should contact them three months before her 60th birthday to request an application form. The letter explained that the pension credit benefits may be paid early in the event of serious ill health.
6. Mrs N says that she contacted NHS Pensions on 15 April 2013 and 28 February 2014, and was told that her pension credit benefits would not be actuarially reduced if she were to retire at age 55. On 28 February 2014, NHS Pensions wrote to Mrs N with an estimate of her pension credit benefits. This showed a maximum lump sum of £95,812 and a pension of £14,371 a year.

7. Mrs N's independent financial adviser (**IFA**) says NHS Pensions told him, on 16 June 2016, that his client was able to take her pension credit benefits at age 55 due to her MHO status. However, she would also have to take her main Scheme benefits at the same time.
8. On 29 June 2016, Mrs N gave notice to her employer of her intention to retire on 19 October 2016, aged 55.
9. At the end of August 2016, NHS Pensions wrote to Mrs N with details of her pension credit benefits. The letter said that, as she was taking early payment of the benefits, there would be a reduction of the maximum lump sum to £79,979.06 and the pension to £11,996.85 a year.
10. On 8 September 2016, Mrs N complained to NHS Pensions about the reduction in her pension credit benefits. She said that her last work shift was at the end of the month and NHS Pensions had confirmed to her and her IFA that the pension credit benefits would be payable, together with the Scheme benefits, at age 55 without reduction. She asked for the pension credit benefits to be restored to the unreduced amount.
11. On 4 November 2016, NHS Pensions responded under the first stage of the Scheme's internal dispute resolution procedure (**IDRP**). It said that any early retirement rights applicable to her NHS employment, such as MHO status, did not apply to her pension credit benefits. The complaint was not upheld. Mrs N asked for the decision to be reviewed.
12. On 30 January 2017, NHS Pensions responded under the second stage of the IDRP. NHS Pensions said that Mrs N called the Customer Contact Centre (the **Contact Centre**) on 20 May 2016, and was correctly told that her pension credit benefits were not payable before 60 without an actuarial reduction. It confirmed that her IFA had called the Contact Centre on 16 June 2016 and was told that benefits were payable at 55. However, it was unclear if the call handler had been referring to the main Scheme benefits or the pension credit benefits. NHS Pensions reiterated that, under the regulations governing the Scheme, unreduced pension credit benefits were payable from normal retirement age which is 60. It acknowledged that the Contact Centre appeared to have provided incorrect information to Mrs N, but said that she was told at other times, in writing and over the telephone, that the pension credit benefits were not payable before age 60.
13. Mrs N brought her complaint to us. She has provided documentation which the IFA says includes contemporaneous notes made during telephone calls to NHS Pensions on 15 April 2013, 16 June 2016 and 22 July 2016. She says that these show that the Contact Centre informed them that she could take her pension credit benefits at age 55 because of her MHO status. Her IFA points out that more recent notes were added to the documents after they were told of the reduction in the pension credit benefits.

14. NHS Pensions has also provided notes of telephone conversations with Mrs N and her IFA. Of all the dates mentioned by Mrs N, these only confirm the telephone call with her IFA on 16 June 2016. NHS Pensions also says that Mrs N was given the option of withdrawing her application to take her pension credit benefits, but she decided to proceed with it.

### **Adjudicator's Opinion**

15. Mrs N's complaint was considered by one of our Adjudicators who concluded that significant distress and inconvenience had been caused by NHS Pensions. The Adjudicator's findings are summarised briefly below:-
- It is difficult to distinguish between the IFA's contemporaneous and recent notes.
  - The notes from the IFA and NHS Pensions are insufficient to clarify what exactly was said, and understood, at the time of the conversations.
  - There are conflicting accounts of the telephone conversations, which cannot be verified by the notes, leading to the likelihood of confusion on both sides.
  - NHS Pensions appears to accept that it provided incorrect information to Mrs N and this amounts to maladministration.
  - Correct information was provided to Mrs N on other occasions. It was therefore not reasonable for her to rely on the incorrect information.
  - After being informed of the error, Mrs N had the opportunity to withdraw from a house purchase but went ahead with the transaction.
16. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her 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 N for completeness.

### **Ombudsman's decision**

17. Mrs N and her IFA says that there was no confusion on their part during the telephone calls with NHS Pensions, as they were clear that they were discussing the pension credit benefits. Mrs N and her IFA say that they did everything possible to clarify the situation regarding taking the pension credit benefits, including asking for written confirmation, but were told that it could not be provided. The IFA maintains that the information provided to Mrs N was unambiguous and NHS Pensions has apologised for providing incorrect information.
18. I acknowledge that NHS Pensions has apologised for the misinformation, but that does not entitle Mrs N to incorrectly calculated benefits from the Scheme. Moreover, I note that NHS Pensions also provided correct information to her at other times.

19. There are no recordings of the telephone calls between the parties, so it is unclear exactly what was said. Mrs N and her IFA were under the impression that the pension credit benefits would be paid without reduction, despite being given information to the contrary.
20. I have considered what reliance Mrs N placed on the information provided to her, and I find that she has not suffered any financial loss. She is receiving the correct amount of pension credit benefits. She was aware of the correct benefits before deciding to proceed with the house purchase and cannot rely on her increased mortgage costs to substantiate a claim of financial loss. NHS Pensions also gave Mrs N the opportunity to withdraw her application for pension credit benefits, but she decided to proceed in the full knowledge that the benefits would be reduced.
21. I understand Mrs N would have relied on the pension credit benefits in her retirement planning, but she also had a main Scheme pension to which she was entitled at age 55. I do not believe that she would have foregone the opportunity to retire at age 55 under her main Scheme pension.
22. Clearly, Mrs N has experienced some distress and inconvenience as a result of the error, so it is only right that NHS Pensions should recognise that. The award of £500 is adequate in my view.
23. Therefore, I partly uphold Mrs N's complaint.

## **Directions**

24. Within 21 days of the date of this Determination, NHS Pensions shall pay £500 to Mrs N in respect of the significant distress and inconvenience caused to her by its error.

**Anthony Arter**

Pensions Ombudsman  
27 February 2018