

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mrs Joanne Jenkins
Scheme	NHS Pension Scheme (the Scheme)
Respondent(s)	1. Department of Health (DoH) 2. McKesson

Subject

Mrs Jenkins' complaint which is against DoH and McKesson, as employer and administrator of the Scheme, respectively, is that they failed to advise her that an estimate of her retirement benefits which was given to her in September 2011 was incorrect.

Following the abolition of Strategic Health Authorities (**SHAs**) and Primary Care Trusts (**PCTs**) on 31 March 2013, Mrs Jenkins' ex-employer Bristol Primary Care Trust (**BPCT**) no longer exists. The Department of Health (**DoH**) has taken on responsibility for any issues arising from the SHAs and PCTs. Therefore the complaint which was initially against BPCT is now against DoH.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against DoH because it was McKesson, and not BPCT, who provided the incorrect estimate and knew that it was incorrect. The complaint against McKesson should be upheld but only to the extent of non-financial injustice Mrs Jenkins has suffered.

DETAILED DETERMINATION

Material Facts

1. On 6 September 2011 Mrs Jenkins was given an estimate of her retirement benefits based on a leaving service date of 30 November 2011, which was downloaded using NHS Pensions online system (**POL**). In obtaining this estimate her pay and service details had to be entered. At that time, Mrs Jenkins was 55 years old but she had Special Class Status which meant that she was allowed to retire at age 55 with no reduction to her benefits. The estimate contained an important note at the beginning informing her to check the statement and accompanying notes carefully.
2. The estimate Mrs Jenkins received showed that she could take either an annual pension of £6,149.79 and a lump sum of £18,449.37 or a reduced annual pension of £4,941.80 and a tax free lump sum of £32,945.30. Her last day of service was shown as 30 November 2011. Mrs Jenkins says that based on this quotation she decided to retire in December 2011.
3. On 21 October 2011, BPCT sent McKesson a 'Termination form' showing the date of termination of her employment to be 20 November 2011 and her reason for leaving was given as "Voluntary Early Retirement – with Actuarial Reduction".
4. On 26 October 2011 McKesson wrote to Mrs Jenkins informing her that they had been notified by her employer of her approaching retirement. They enclosed a form AW8 for her to complete and return to them. The letter from McKesson appears to be on a standard template as it contained the paragraph:

"An estimate and statement of membership has also been included, please check your record looks correct and notify us immediately if you believe it is not.
 Or
We have been unable to provide you with an estimate of benefits and membership statement, if you require these for your records, please contact the NHS Pensions Agency on 0845 421 4000 to request these."
5. Between 13 and 15 December 2011 there was an exchange of emails between McKesson and NHS Pensions regarding Mrs Jenkins' service details. As a result of this exchange two periods of service – 10 September 2001 to 31 December 2007 and 1 August 2006 to 19 November 2006 – were deleted by NHS Pensions because they were duplicated.

6. McKesson completed a form AW171-(V3), dated 23 December 2011, which was received by NHS Pensions on 28 December 2011. It shows Mrs Jenkins' new date of leaving as 22 December 2011.
7. On 8 March 2012 NHS Pensions wrote to Mrs Jenkins quoting revised retirement benefit figures which she queried, however it was not until April 2012 that she was informed about the duplicated service. The revised figures were also incorrect. The correct benefits were an annual pension of £4,398.36 and a tax free cash sum of £29,322.40 and she was advised of them in October 2012.
8. In response to enquiries by my office NHS Pensions say:
 - Annual membership statements were downloaded by Mrs Jenkin's employer on 18 July and 6 September 2011 using POL;
 - The exchange of emails in November/December 2011 with McKesson was not the first attempt to ensure that Mrs Jenkins' membership record was correct. They had previously contacted BNPCT/McKesson about two employments with a start date 1 September 2001 and 1 April 2002, respectively, because the hours quoted for these two posts exceeded the maximum number of pensionable hours. BNPCT/McKesson had first reduced the hours to the maximum allowed, but later realised that the posts had been duplicated and excess hours had been quoted.
 - The leaving service date they used to calculate her retirement benefits was 22 December 2011. It is not uncommon for untaken holiday entitlement to be added on when someone leaves service for the purpose of calculating his/her pension.

Summary of Mrs Jenkins' position

9. At the time of her retirement she was on long term sick leave. Two years previously, she had bowel cancer and had major surgery. She discussed with her manager her return to work taking into account her disability and how her role as community team leader could be adapted to deal with it. Her manager was quite open to her returning to work, but after due consideration and based on the pension estimate she had received she decided to take early retirement.

10. Since her retirement she has been on employment and support benefits. She also sold some of her assets, i.e. her share of a house in Turkey because she could not afford to maintain it.
11. She had no idea that the figures provided by McKesson were incorrect. She assumed that it would be McKesson's role to check these figures before submission.
12. She does not understand how McKesson can justify not informing her prior to her retirement that they had discovered an error in her hours. They also made so many mistakes in rectifying these hours.
13. NHS Pensions say that they did not receive her application (Form AW8) until 17 January 2012. McKesson were aware of her retirement, so she cannot understand why it took three months for the application to reach NHS Pensions.
14. She queried the estimate she received in March 2012 because this was significantly lower than the figures she had been quoted in September 2011. NHS Pensions wrote to her informing her about the duplicate years.
15. In the following months she made numerous telephone calls and wrote to BNPCT because not only had she based her decision to retire on the figures quoted to her in September 2011, she would not have taken retirement had she been informed in December 2011 that those figures were incorrect.
16. The revised figures quoted by NHS Pensions in March 2012 were also incorrect.
17. The shortfall in her annual pension and lump sum are £542 and £3,398, respectively. This may not sound a great amount over her retirement years, but it has been significant enough to cause her to make life changing decisions. She had bought a property in Turkey jointly with her brother, which she had to sell as she could not afford to pay the yearly maintenance fees. She also had to sell one of her two cars and buy a smaller car.
18. She is stressed and anxious because of having to chase up for correct pension figures and to live on a much smaller pension.

Summary of DoH's position

19. The only indication that BPCT were in fact in receipt of the first set of adjusted figures prior to Mrs Jenkins' retirement date are two lines in the time contained in the paperwork. This timeline is unsigned and as no BPCT staff is mentioned by

name it would be difficult to confirm or prove BPCT's involvement one way or the other.

20. It is also impossible to prove one way or the other if Mrs Jenkins would have retired if she was given the correct retirement figures.

Summary of McKesson's position

21. The whole basis of Mrs Jenkins' complaint is that there was a duplicate post on her pension record which was held by NHS Pensions, who are the administrators of the Scheme. The duplicate record was created in 2002 and ended in 2007. The details of this duplicate post as held by NHS Pensions was the cause of the inaccurate pension estimate provided to Mrs Jenkins by McKesson. However as they did not become the provider for payroll and pension service for BPCT until 1 May 2009, they cannot be held responsible for the incorrect data which another party had provided. In addition, they could not have known that the record held by NHS Pensions was inaccurate.
22. They would not have been in a position to identify the incorrect data, as they did not become aware of it until 13 December 2011 when a query was raised by NHS Pensions regarding the duplicate information. At this point, Mrs Jenkins had already left her employment with BPCT and her application for payment of retirement benefits was being processed. Therefore, her allegation that if she was informed of the incorrect data on which the retirement estimate was based it would have affected her decision to retire is irrelevant.

Even if they had informed her of the error as soon as they were aware of it, they would not have been able to provide her with any revised figures as her retirement had already been processed and they would no longer have had access to her records at NHS Pensions.

23. They do recommend that members check their pension information carefully and point out that statement sent to Mrs Jenkins states 'Important – Please check this statement and the accompanying notes carefully, and keep them for future reference' at the top of the document. They expect the member to check all the information before making a decision to retire as the only person in a position to verify the accuracy of the information is the member.

24. The error should have been clear to Mrs Jenkins as she should have known how many positions she held with her employer and for how long. As they are not responsible for the error regarding the duplicate post and Mrs Jenkins did not highlight this error with them, they totally refute any allegation that they are in any way responsible for this issue.

Conclusions

25. There is no dispute that the estimate provided to Mrs Jenkins in September 2011 was wrong. The error was due to the fact that the service used to calculate her retirement benefits was overstated and therefore the figures were higher than her entitlement. Providing incorrect estimates is maladministration.
26. Although NHS Pensions say that Mrs Jenkins' employer had downloaded the September 2011 estimate, it was in fact McKesson who had done this and provided her with the estimates. Therefore, I find that there has been maladministration by McKesson, but not by DoH.
27. I now have to consider what injustice, if any, Mrs Jenkins has suffered as a consequence of the above maladministration.
28. Mrs Jenkins received the incorrect estimate of her retirement benefits in September 2011. BPCT notified McKesson that she had left service on 20 November 2011, but McKesson notified NHS Pensions, on 23 December 2011, that her new date of leaving was 22 December 2011. Therefore for the purpose of calculating her pension, her service did not end until 22 December 2011. The error was not discovered until 13 December 2011. So the error was discovered a week before her service ended, but she was not informed of the error until April 2012. That was over three months after her service ended.
29. McKesson say that they were not aware until 13 December 2011 that her service data was incorrect and therefore could not have advised her before that date of the error. In addition, by the time they became aware she had already left service. McKesson also say that Mrs Jenkins should have checked all the information on the estimate to ensure it was correct before deciding to retire.
- While I agree that McKesson could not have informed her before 13 December 2011 that the September 2011 estimate were incorrect, they could have alerted her to this fact before her service ended on 22 December 2011. In addition, I do not accept that Mrs Jenkins was responsible for checking that the estimate was

correct. The error was not obvious and was only discovered after an exchange of emails between McKesson and NHS Pensions. It was McKesson's responsibility to ensure that the information used to calculate her retirement benefits was correct.

Had McKesson informed Mrs Jenkins as soon as they became aware of the error, she would have had the opportunity to consider whether or not she wished to proceed with her retirement. It is not relevant that McKesson may not have been able to provide her with revised figures before she retired. McKesson's failure to inform her of the error meant that she lost the opportunity to reconsider her position before her retirement date. She could have contacted BPCT and asked for her retirement to be put on hold until after she had considered revised figures.

30. By taking the decision to retire after receipt of the September 2011 estimate, I am satisfied that Mrs Jenkins acted in good faith and reasonable reliance on the incorrect figures. I now have to consider if she acted to her detriment in doing so. If I find that she did, then my aim must be to place her, as far as possible, in the position she would have been had there been no maladministration.
31. It is clear that she has suffered non-financial injustice in the form of distress and inconvenience as a result of the error.
32. Mrs Jenkins says that had she known that the estimate provided in September 2011 was incorrect she would not have left service. I need to consider what action, if any, she has taken to mitigate her loss. There is nothing to show that she made an attempt to contact BPCT in April 2012, when she first found out about the error, to enquire about the possibility of reinstatement of her job. In addition, she was on long term leave at the time she retired and has since been on employment and support benefits. Therefore, I am unable to find that she had tried to mitigate her loss. Consequently, I am unable to say that on the balance of probability she would not have left service had the correct figures been quoted to her in September 2011.
33. Mrs Jenkins says that she had to sell a house in Turkey, which she part owned, because she was unable to afford to maintain it and had to sell one of her two cars and buy a smaller car. I can see that the sale of the house in Turkey and selling one of her cars to buy a smaller car would have an effect on her lifestyle.

However, I am unable to find that she completed these sales as a direct result of the misinformation. Nor therefore can I say that she has suffered a loss as a result of this.

34. For the reasons given above, I uphold Mrs Jenkins' complaint but only to the extent of non-financial injustice she has suffered.

Directions

35. I direct that within 28 days of this determination, McKesson shall pay Mrs Jenkins compensation of £300 for the non-financial injustice she has suffered.

Jane Irvine
Deputy Pensions Ombudsman

18 November 2014