

## Ombudsman's Determination

Applicant	Ms N
Scheme	HSC Pension Scheme ( <b>the Scheme</b> )
Respondents	HSC Business Services Organisation (incorporating HSC Pension Service and Payroll Shared Services Centre)  Department of Health, Social Services and Public Safety (NI) ( <b>DHSS</b> )

## Outcome

1. Ms N's complaint against HSC Business Service Organisation is partly upheld. To put matters right, HSC Business Service Organisation shall award Ms N £500 in recognition of the significant distress and inconvenience which she has experienced dealing with this matter.
2. The complaint made against DHSS is one of employment law which is outside of my jurisdiction and therefore cannot be considered by me.

## Complaint summary

3. Ms N has complained that:-
  - HSC Pension Service (**HSC**), a part of the HSC Business Services Organisation, supplied her with an early retirement quotation in August 2016 showing incorrectly overstated benefits available to her as at 31 July 2016. She says she relied upon this quotation to her financial detriment by leaving employment early with her employer, DHSS, on 30 November 2016. In her view, she will suffer a shortfall during the duration of her pension of "tens of thousands of pounds".
  - DHSS persuaded her to take a part time role for a fixed term of 10 months, in addition to her existing two roles, without drawing to her attention the allegedly detrimental effect this would have on the amount of retirement benefits available to her from the Scheme.

## Background information, including submissions from the parties

4. Ms N had three distinct employments with DHSS which overlapped for part of the time. Her first job, post 10008849, was a part-time "Band 7" role which she held from

20 March 2006 until 30 November 2016. Her second job, post 10016444, was a lower “Band 5” role which commenced on 15 May 2007 and ended on 27 March 2016. Her third job, post 10125531, was another part-time “Band 5” role. She held this post from 14 September 2015 until 31 July 2016.

5. In August 2016, HSC sent Ms N an “Illustration of Benefits” (**the Illustration**), as requested by her, showing that she was entitled to an accrued pension of £15,152 per annum and a tax-free lump sum of £45,457 on 31 July 2016. It said that these figures had been calculated using pensionable service of 30 years 186 days and superannuable remuneration of £39,731 per annum.
6. The illustration included a proviso which stated that:

“Please note these details are for illustration purposes only. Please inform your employer if you are using these figures to support a decision to retire. Your employer can then request a statement of benefits based on final figures. Members should inform HSC if they feel the service or salary details above are not correct.”
7. Ms N decided to retire early on 30 November 2016 and says that she gave DHSS three months’ notice of her decision. She completed the relevant application form in September 2016 and received from HSC, in November 2016, “A Statement of Age Retirement Benefits” (**the Statement**) showing that she was entitled to a pension of £13,766 per annum and a tax-free lump sum of £41,296 in the Scheme from 1 December 2016.
8. Ms N asked HSC why the benefits payable from her early retirement date of 30 November 2016 were lower than those quoted to her as available from 31 July 2016.
9. In its letter dated 31 January 2017, HSC informed Ms N that the actual pension benefits payable to her had been calculated using a lower final pensionable salary than the one used to work out her estimated benefits. HSC explained that:-
  - The Payroll Shared Services Centre (**PSSC**), another function of the HSC Business Services Organisation, notified it of her three separate employments to be accounted for in the calculation of her pensionable service and final pensionable salary for use in the Illustration sent to her in August 2016.
  - It allowed for only two of her employments to calculate her final pensionable salary for use in the Statement by mistake because its records showed that she did not work any hours in her other role\* from 1 December 2015 to 30 November 2016.
  - After PSSC provided it with her pensionable salaries for the three years prior to 30 November 2016, it determined that the highest one for the purposes of calculating her final pensionable salary in the Scheme was the first, that is, from 1 December 2013 to 30 November 2014. This was because she had worked more hours in her higher Band 7 post during this period.

- It recalculated her final pensionable salary to be £38,271 per annum which was still slightly lower than one upon which her estimated benefits as shown on the Illustration had been based.

\*Ms N worked variable hours for Post 10016444.

10. Ms N received a letter, dated 7 February 2017, from HSC which said that her pension and tax-free lump sum available in the Scheme had been recalculated using revised employment details from DHSS. This letter showed that:-

- She was now entitled to a pension of £14,901 per annum and a tax-free lump sum of £44,703.
- She would receive pension arrears of £179.32 and a tax-free lump sum balance payment of £3,405.98.

11. On 19 February 2017, Ms N complained to DHSS that:-

- The pension and tax-free lump sum payable to her in the Scheme were lower than those shown on the Illustration which she received in August 2016.
- In her view, her third job, post 10125531, had a detrimental effect upon the amount of her early retirement benefits in the Scheme. If DHSS had made her aware of this, she would not have accepted the additional role.
- She applied for early retirement based on the figures shown on the Illustration so that she could spend more time with her parents who were both in poor health.

12. DHSS responded that her pension complaint would be dealt with by HSC under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). HSC did not uphold her complaint at both stages of IDRP. HSC informed Ms N that her retirement benefits had now been calculated correctly and in its Stage Two decision letter dated 11 December 2017 said that:

"I regret you were of the understanding that your total pension would be based on your Band 7 salary. Unfortunately, we cannot pay you a pension for all service based on this salary as this would be inequitable to other members and not be in keeping with scheme regulation 77(10) of The Health and Personal Social Services (Superannuation Regulations) (Northern Ireland) 1995 (**the Regulations**) as detailed below.

When calculating your pension, we must take into account the service worked at Band 7 level and...at Band 5 level. As the salary from 1 December 2013 to 30 November 2014 was the best of the last three years we did not use the salary you earned in your temporary Band 5 post, as this was not within this period and therefore this employment did not disadvantage you. To calculate your pension based on your earnings for this period we have used both your Band 7 and your casual Band 5 salaries.

...HSC would not be aware of the working pattern/bands of individual members of the Scheme however we ensure that information is available for members to source when making any changes to their working pattern...

...The difference between your estimated pension and your revised pension is £252 per year and the difference in your one-off lump sum is £754. All estimated calculations are an illustration of benefits only and this information is detailed in the body of the estimate letter you received..."

13. Regulation 77(10) of the Regulations states that:

"77 (10)... in calculating final year's superannuable pay there shall be taken into account superannuable pay in respect of any other superannuable employment in that final year except a superannuable employment in respect of which the member continues to accrue rights to benefits..."

14. HSC sent Ms N a letter, dated 23 January 2020, which said that her pension and lump sum available in the Scheme had to be recalculated again using revised employment details. This letter also showed that:-

- She was now entitled to a pension of £15,027 per annum and a tax-free lump sum of £45,080.
- She would receive further pension arrears of £83.76 and a tax-free lump sum balance payment of £78.34.

15. HSC explained that the latest revision to her benefits were necessary because after asking PSSC to provide "accurate terminating forms" following her complaint to the Pensions Ombudsman, it discovered that:-

1. "The protection of pay" criterion no longer applied to her retirement benefits and it was therefore unnecessary to consider it as part of the benefit check.
2. The part time hours previously provided for her were incorrect.

### **The position of HSC**

16. HSC has said that:

"PSSC was responsible for completing the salary information for all estimate and retirement applications... This is then sent to HSC to complete a concurrent calculation for the total pensionable pay and a service summary to calculate retirement benefits to their expected retirement date.

Initially we only held information for two posts which was later rectified and an estimate covering the three posts was received in August 2016 from PSSC, an inaccurate calculation was completed by HSC of the concurrent salary for the final year and overstated the total pensionable pay by £4,910.59 which resulted in an inaccurate estimate. The actual retirement calculation processed in November 2016 was for the retirement benefits and not an

estimate and based on the information that was provided and deemed correct at that time...

PSSC...retains the payroll function for all HSC Trusts and employers including the HSC Board and Business Services Organisation. HSC and PSSC fall under the Business Services Organisation...

Typically, revisions are part of a normal process as salaries may change due to pay increases and retrospective changes etc. We had received completed termination of scheme notices from PSSC at the retirement date and Ms N's record was updated to match that of these notifications which confirmed all posts ceased on 30/11/2016..."

17. HSC disagreed that it was partly to blame for the mistakes because it had been totally reliant on payroll information from PSSC "to provide forecasts and to calculate any award of benefits". It also said that:-

- There were no delays in the provision of information about Ms N's retirement benefits once it had received the required salary details from PSSC.
- It had acted in good faith on any salary figures provided and there was consequently no maladministration on its part.

### **Adjudicator's Opinion**

18. Ms N's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of HSC Business Service Organisation. The Adjudicator's findings are summarised below:-

- A complaint of negligent misstatement must be based upon an inaccurate statement, usually called a 'representation'. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.
- In this case, Ms N had complained that she relied on the Illustration showing incorrectly overstated benefits available to her as at 31 July 2016 to her financial detriment by leaving employment early with DHSS.
- In the Adjudicator's opinion, the Illustration was not a clear and unequivocal representation. It clearly stated the information was for illustration purposes only and that Ms N should tell her employer if she was using the figures shown to support a decision to retire. DHSS would then request a statement of benefits based on final figures.
- As there had been no relevant representation, the Adjudicator did not believe that there had been any negligent misstatement by HSC Business Services Organisation, and no estoppel.

- The Adjudicator also considered whether the incorrect information constituted maladministration which had resulted in any non-financial injustice such as distress and inconvenience. Even where it was recognised that maladministration had occurred this did not always result in a payment for non-financial injustice.
  - The information provided by HSC Business Services Organisation via HSC in: (a) the Illustration; (b) the Statement; and (c) the letter dated 7 February 2017, concerning Ms N's pension entitlement in the Scheme were clearly inaccurate.
  - HSC had conceded that mistakes were made when calculating the pensionable salaries used to determine the early retirement benefits available to Ms N, as shown on the Illustration and the Statement. It subsequently discovered that the benefit figures shown in its letter dated 7 February 2017 to Ms N were also incorrect.
  - It was not until Ms N received HSC's letter dated 23 January 2020 that she was provided with correct details of her actual early retirement benefits in the Scheme.
  - There was no doubt Ms N should have been given the correct information at an earlier stage. The failure to do so was clearly maladministration on the part of HSC Business Services Organisation as HSC and PSSC were both functions within it.
  - The Adjudicator did not consider that Ms N had suffered any actual financial loss. What she had suffered was a loss of expectation. She expected to receive the higher pension but was not entitled to it. HSC could only pay her the correct pension calculated in accordance with the Regulations.
  - However, it was clear that she had experienced significant distress and inconvenience because of the maladministration. In the Adjudicator's view, the non-financial injustice which Ms N had suffered was sufficiently significant to warrant a compensation award of £500.
  - Ms N had also complained that DHSS improperly persuaded her to take a part time role for a fixed term of 10 months in addition to her existing two roles, but this is a matter of employment law with which I could not become involved. In any case, Ms N's contention that by taking on the additional role detrimentally affected the amount of retirement benefits available to her from the Scheme was not supported by the available evidence.
  - It was therefore the Adjudicator's opinion that Ms N's complaint should be partly upheld against HSC Business Service Organisation.
19. HSC disagreed that it should be held partly responsible for providing Ms N with incorrect details of the early retirement benefits available to her from the Scheme because it relied entirely on PSSC to provide it with accurate payroll data to perform its benefit calculations. As PSSC supplied it with flawed payroll information for Ms N, HSC considered that PSSC was entirely to blame for the mistakes made.

20. Ms N's complaint was passed to me to consider.

### **Ombudsman's decision**

21. HSC has said that it should not be blamed for providing Ms N with incorrect information about the retirement benefits available to her from the Scheme. In its view, the fault lay entirely with PSSC for supplying it with flawed payroll data to perform its calculations for Ms N. It has also said that it had acted in good faith when using the erroneous salary data in its calculations and sent Ms N details of the benefits available to her in a timely fashion.
22. While this may indeed be the case, I note that HSC and PSSC are both functions of the HSC Business Services Organisation. I therefore agree with the Adjudicator that the failure to provide Ms N with correct information about the early retirement benefits available to her from the Scheme at an earlier stage was clearly maladministration which can be attributable to the HSC Business Services Organisation.
23. Although the maladministration identified has not caused Ms N any injustice in the form of actual financial loss, it is evident that she has suffered significant distress and inconvenience as a result.
24. I partly uphold Ms N's complaint against the HSC Business Services Organisation. How the award is accounted for within the HSC Business Services Organisation is a matter for it to decide and I make no further direction in this respect.

### **Directions**

25. Within 14 days of the date of this Determination, HSC Business Service Organisation shall pay £500 to Ms N in recognition of the significant distress and inconvenience which she has suffered in dealing with this matter.

**Anthony Arter**

Pensions Ombudsman  
27 November 2020