

Ombudsman's Determination

Applicant	Dr Joanna Crawford
Scheme	NHS Pension Scheme (the Scheme)
Respondent(s)	NHS Pensions

Complaint summary

Dr Crawford's complaint is that she was:

1. mis-sold an added years contract that matures beyond her normal pension age; and
2. given misleading and unclear information concerning her added years contract.

Summary of the Ombudsman's determination and reasons

Dr Crawford's first complaint should not be upheld against NHS Pensions because it was Dr Crawford's choice to take out the contract to age 65 rather than 60. And prior to taking out the contract, Dr Crawford was supplied with sufficient information to enable her understand the nature of the added year's contract, and the implications of her choice.

Dr Crawford's second complaint should be partly upheld against NHS Pensions, because she was supplied with incorrect information about arrears of added year's contributions; and, prior to making a complaint, Dr Crawford was unable to obtain information about the value of added years she had accrued.

DETAILED DETERMINATION

Material Facts

1. On 13 January 1999 NHS Pensions wrote to Dr Crawford (then known as Mrs Poole) in response to an enquiry she had made about additional benefits. The letter said that Dr Crawford could purchase a maximum of 11 years 293 days' additional membership. However, if she took out an additional membership contract to her 60th birthday (her normal retirement date), the most Dr Crawford could buy was 8 years 269 days. The cost of purchasing each added year from Dr Crawford's next birthday was said to be 1.03% to age 60 and 0.77% to age 65. The letter also said that the information was quoted on the basis that her employment pattern and membership history remain unchanged.
2. On 20 January 1999 St Albans and Hemel Hempstead NHS Trust wrote saying:

"Subject to confirmation from NHS Pensions Agency, you can purchase up to:-

5 years 350 days at 9.00% from 16 April 1999 to age 55

8 years 269 days at 9.00% from 16 April 1999 to age 60

11 years 251 days at 9.00% from 16 April 1999 to age 65"

The letter also enclosed an AB54 (ADP) election form for Dr Crawford to complete.
3. On 26 January 1999 Dr Crawford completed the employee section of the AB54 (ADP) form (the employer section was completed on 14 April 1999). She chose to purchase 11 years 251 days of additional service over the period to age 65. The signature section of the form contained the following declaration:

"I have read the Pensions Agency Leaflet "Increasing your Benefits"

I am not aware of any reason why my health should prevent me from completing my purchase(s)."
4. NHS Pensions has supplied a copy of the "Increasing your Benefits" leaflet (**the leaflet**). The introduction section of the leaflet said that, although the aim of the leaflet was to provide information, if there was any doubt then members should seek independent financial advice.

5. The leaflet also said:

“The amount of additional membership you can buy depends on the amount of membership you will have by the normal retirement age of 60...

You will normally be expected to pay the extra contributions until your chosen retirement date. But if your payments vary or stop before that date your benefits may be reduced...

If before your chosen retirement date you:

- Leave the Scheme for any reason except ill health but including redundancy and voluntary early retirement, or ...

You may get less additional membership than you applied for and the benefits you get may be affected.

We will also have to reduce the benefits you get from your additional membership or unreduced lump sum, if it is paid before your chosen retirement date.”

6. Table 1 on page 6 of the leaflet sets out how much additional membership can be bought. Next to the table it says “If you will have more than 20 years normal Scheme membership by age 60 ... you can only buy additional membership to bring your total membership to 40 years.”
7. On 30 December 2011, Dr Crawford’s employer incorrectly stopped collecting added years contributions from Dr Crawford’s salary.
8. NHS Pensions have supplied the following notes of telephone conversations:

12 December 2012, 2:11 pm

“Member hasn’t been added for last year. Advised conts should have still be taken, member is in writing.”

13 December 2012, 12:45 pm

“advised member where she could get the reduction factors for her added years.”

13 December 2012, 12:55 pm

“member would like a copy of letter and form that she signed as she is stating that she didn’t agree to pay until 65...

Member is also insisting on a call back from the added years team as she would like to know how to work out if she left nhs, how much added years she would get I have advised her of the gad reductions factor but she still wants to talk to someone.”

14 December 2012, 2:06pm

“called member confirmed additional contract details informed member we have a copy of said contract to age 65...avc team.”

9. On 5 February 2013 NHS Pensions wrote to Dr Crawford saying:

“I can confirm you have purchased an Additional Voluntary Contribution (AVC’s) contract in effect from 16 April 1999 amounting to 11 years 251 days at an additional cost of 9.00% on your salary to your chosen retirement age of 65.

On investigation you have additional contract arrears of £2224.42 these can be paid back which is discussed with your payroll officer on how much and at what rate [*sic*].”

10. On 26 February 2013 Dr Crawford wrote a letter of complaint to NHS Pensions. She asked NHS Pensions to consider whether she had been fully informed she took out the contract, and whether it had been mis-sold to her.
11. On 4 March 2013 Dr Crawford received a pension statement. The statement said that, to date, Dr Crawford had purchased 5 years 224 days additional membership.
12. On 25 March 2013 NHS Pensions responded to Dr Crawford under stage one of Internal Dispute Resolution Procedure (**IDRP**). The complaint was not upheld. However, the letter went onto say that:
- Dr Crawford had been provided with the wrong figure in relation to arrears of added years contributions. The arrears amounted to £499.02 not £2,224.42.
 - If Dr Crawford wished to end her added years contract, she would be credited with 5 years 220 days additional membership.

13. The 25 March 2013 letter also had enclosed with it:
- The formula for used for calculating added years, being
$$\frac{\text{Period of payment (scaled if part time)} \times \text{amount being purchased}}{\text{Length of contract}}$$
 - Early retirement factors applicable to the added years contract (pension factor table ERF2, lump sum factor table ERF8) and main scheme benefits.
14. Dr Crawford wrote to NHS Pensions on 9 April 2013, as she was not satisfied with the IDRP stage one decision, and wished to proceed to stage two or the process.
15. On 30 July 2013 NHS Pensions replied to Dr Crawford under stage two of IDRP. The stage 1 decision was upheld.
16. As part of the stage two letter NHS Pensions also supplied:
- a breakdown of how the projected added years to age 50, 55 and 60 had originally been calculated
 - a breakdown of added years purchased to 30 December 2011
 - an estimate of added years to 31 March 2012 (assuming arrears were paid), and
 - an estimate of benefits to age 55 including added years to 30 December 2011.
17. The added years figure to 31 March 2012 was given as 5 years 224 days and the added years figure to 30 December 2011 was 5 years 210 days.

Summary of Dr Crawford's position

18. When the contract was sold NHS Pensions expected her to retire at 60, yet they sold her an added years contract that was due to run until 65, knowing that whatever amount of added years she had reached, it would be actuarially reduced. The effect of the reduction is that on retiring at 60 she will be worse off than if she had bought added years to age 60 in the first place.
19. In 1999 she had heard that is was possible to buy 11 years added years but this would take her to 65, which was 5 years past her pension age.
20. At the time her primary concern was to buy as much as possible to provide for her future and she signed for the option of 11 years additional pension.

21. She did not receive copies of the documents relating to this and was not made aware of the implications of ceasing payments early, working part-time, taking her pension at 60 or earlier.
22. Since January 2012 she reduced her hours to approximately 10 hours per week and she was considering whether to retire early, but it had been impossible to obtain clarification about the value of her added years if she did so.
23. She understood from the leaflet that 11 years 251 days of added years was based on full time employment and that the figures would be adjusted for part-time employment and would be actuarially reduced if she retired early. But she did not fully comprehend the implications of having the added years contract run for five years beyond her normal retirement date. The leaflet did not cover this eventuality and neglected to mention that, in order to reach the added years target of 11 years 251 days, she would have to delay taking her pension until age 65.
24. She made several phone calls to NHS Pensions in December 2012 and received misleading information.
25. During the 14 December 2012 telephone call, she was told that she had purchased 5 years 213 days but it was actually 2 years 319 days, as she was part time and would be further reduced if she retired early.
26. During the phone calls she was told that the calculation of added years was complex. She requested the means to work it out for herself but she was told that this was not possible.
27. In 2013 she became aware that her employer had not been taking any deductions for added years, and to catch up she would have to pay £2,224.42.
28. In the IDRP stage one letter of 25 March 2013 she was told that she would be credited with 5 years 220 days, but this contradicted the information she was given over the phone.
29. The letter February 2013 letter gave an added year's figure of 5 years 224 days, but she did not know if this was based on actual hours, or whole time equivalent.

30. At the time of receiving the IDRP stage one letter she did not feel confident that she could accurately calculate her benefits. She was unable to reproduce NHS Pensions' figures from the formula and reduction factor tables provided in the 25 March 2013 letter.
31. Dr Crawford accepts that she received accurate information in the IDRP stage two letter, but she feels she should have been supplied with the information at a much earlier stage.
32. The contract to age 65 was mis-sold because, had she remained in full-time employment and purchased the maximum added years, her service would have gone beyond 40 years, which the leaflet says is not allowed.
33. In 1999 she was also offered to opportunity to purchase added years to age 55 but this option should not have been offered to her because 55 is not her normal retirement date. She cites a previous decision by the Pensions Ombudsman Service on this topic, 71204/1 - Mrs M A Wootton.

Summary of NHS Pensions' ref position

Mis-selling of added years

34. The 13 January 1999 letter explained the amount of added years Dr Crawford could purchase to age 60 and age 65, and the cost of doing so.
35. Dr Crawford chose to purchase 11 years 251 days to age 65. By signing the AB54 election form she also agreed that she had read the leaflet.
36. The leaflet explained that should payments stop or vary benefits might be reduced. It also explained that benefits would be reduced if paid before the chosen retirement date.
37. If a member works part-time for any period (as Dr Crawford has done) they will receive a partial credit, as they would only be paying additional pension contributions on part-time pay. Any breaks in Scheme membership also have an effect on the amount purchased.
38. When estimates are processed they are generally based on members existing work patterns. An estimate provided to Dr Crawford in 2008 assumed she would be working full time, and an estimate provided in 2011 assumed that she would

continue to work 30 hours until retirement. However, Dr Crawford has since reduced her hours further.

39. The Scheme has a normal retirement date of 60 but this is not compulsory. Scheme regulations include flexibilities, which enable members to choose when they want to retire between the ages of 50 and 70.
40. When Dr Crawford chose a contract end date of age 65, she effectively set in place a plan to work beyond normal retirement age; and she has confirmed that she understood that an actuarial reduction would be applied if she ended the contract early.
41. Dr Crawford may not have fully understood the effect of retirement before the chosen end age of the added year's contract, but the information supplied to her was correct. NHS Pensions do not accept that the contract was mis-sold.

Misleading and unclear information

42. NHS Pensions do not have direct access to payroll records and are reliant upon information supplied to them by employers. What Dr Crawford describes as unclear or misleading information may be a reflection of the information they held at the time of dealing with her enquiries.
43. Employees share a responsibility in relation to their pension. They should read the Scheme literature and regularly check their payslips to ensure contributions have been correctly paid.
44. It is unclear why Dr Crawford did not ask her current employer why they were not deducting additional contributions from her salary.
45. The IDRP stage two letter enclosed a number of tables showing the actuarial factors applicable for early retirement. However, a business decision was taken to remove the full tables from the website, as there are a number of tables and they found that some members were using the wrong ones. A short summary of actuarial factors remain within the Scheme guide.
46. It is regrettable that the level of arrears of added years contributions confirmed to Dr Crawford was incorrect.

Conclusions

Mis-selling of added years

47. Although the normal retirement date is 60, Dr Crawford had the option to continue working beyond the age of 60. At the point of application, NHS Pensions could not have known Dr Crawford's intentions. Dr Crawford would have known that the contributions were due to continue to age 65.
48. When NHS Pensions first wrote to Dr Crawford about added years the letter warned that the amount of service credit quoted was on the basis that her employment pattern and membership history remain unchanged. The leaflet that Dr Crawford was asked to read on applying for an added years contract told her that if her payments stopped or varied, or if she left the Scheme before the end of the contract, then her benefits may be reduced and she would get less additional membership than she applied for.
49. Dr Crawford says it should have been explicitly explained to her that there was a penalty for ending the contract early. However, given the material that she had been provided with, that should have been reasonably obvious. She says that it was not clear that the penalty at on retirement at age 60 meant that she would get less than if she had bought added years to age 60 in the first place. But I do not think it would have been a logical assumption that it would work out the same. The information that she had might have led her to ask if it would be the same. It should not have led her to assume that it was.
50. The leaflet was not strictly accurate in saying that it was not possible to buy added years that would bring total membership to age 40. With 20 or more years' actual service it was possible to buy a further 20 years. However, the Scheme had a maximum total allowable of 40 years at age 60 plus up to 5 years to age 65. So it would have been permissible for Dr Crawford to have a total of 44 years 323 days at age 65 (which is what would have happened with full-time actual service).
51. Mrs Wootton's case is different to Dr Crawford's. Mrs Wootton should not have been allowed to buy added years to age 55 because she had no right to retire then. Dr Crawford had a right to retire at 60 or afterwards.
52. For the reasons above, I do not uphold this part of the complaint.

Misleading and unclear information

53. Since taking out the added year's contract in 1999, Dr Crawford has changed roles and working hours. This had a direct effect on the amount of added years she could purchase.
54. However, Dr Crawford says that on making the relevant enquiries she was given inaccurate and misleading information, was not given the means to calculate the added years figure for herself, and had to make a formal complaint in order to have her questions answered.
55. Dr Crawford says she was given misleading information over the telephone and in writing. Although NHS Pensions records calls, the record is only retained for six months. The written notes made in relation to the calls on 12, 13 and 14 December 2012 are all that survives (see paragraph 8). As the information is in note form it is not exhaustive, covering only the main topic of conversation. They make no reference to Dr Crawford being given a figure in relation to her added years' total. I am unable to find that Dr Crawford was provided with incorrect figures during the phone calls.
56. Dr Crawford was provided with the following written information in relation to the amount of added years accrued:
 1. The 4 March 2013 pension statement said that Dr Crawford had accrued 5 years 224 days of additional membership.
 2. The 25 March 2013 the IDRP stage one decision letter said that to 30 December 2011 she had accrued 5 years 220 days.
 3. The 30 July 2013 IDRP stage two letter said that Dr Crawford had accrued 5 years 210 days to 30 December 2011, and if the arrears were paid off, as of 31 March 2012, she would have accrued 5 years 224 days.
57. The estimate of additional membership given on 4 March 2013 pension statement was presumably calculated on the assumption that Dr Crawford would repay the arrears. But if this was the case, neither the statement nor the covering letter explained this.

58. The IDRP stage one and two letters contain slightly different figures in relation to the amount accrued to 30 December 2011. While NHS Pensions should not have provided Dr Crawford with incorrect information the difference was only ten days. The higher (incorrect) figure of 5 years 220 days would have given Dr Crawford a reasonable idea in relation to her prospective benefits, which in any case would not be confirmed until such a time as NHS Pensions processes an application for retirement benefits.
59. The evidence does not support Dr Crawford having been provided with wholly inaccurate and misleading information. Dr Crawford says that she wasn't given the means to calculate for the added years for herself. I do not think, though, that NHS Pensions needed to provide them to her. The calculation is not straightforward, and Dr Crawford ought to have been able to rely on NHS Pensions to get the calculation right.
60. NHS Pensions say they have removed the reduction factors from the website because they found that members were using the wrong tables. That seems to me to be a matter for NHS Pensions' judgment.
61. However, given the difficulties of Dr Crawford working out added years for herself (particularly in circumstances of part-time employment), NHS Pensions should have been able to provide the appropriate information, when asked.
62. Dr Crawford says that she did ask, though because of the limited telephone records there is little evidence about how, before answers were given in the IDRP stage one and two letters. However, I accept that Dr Crawford would not have gone to the lengths of this complaint unless she had asked, but had not received clear answers.
63. She now has the answers, but she was clearly provided with incorrect information in relation to the amount of arrears on her added year's contract; and had difficulty obtaining information, to the extent that she had to make a formal complaint. So Dr Crawford's complaint can be upheld the extent that she was inconvenienced, and she should receive a modest amount of compensation for that.

Directions

64. Within 28 days NHS Pensions shall pay Dr Crawford £200.

Tony King

Pensions Ombudsman

6 February 2015