

Ombudsman's Determination

Applicant	Miss K
Scheme	NHS Pension Scheme (the Scheme)
Respondent	Countess of Chester Hospital (the Hospital)

Outcome

1. Miss K's complaint against the Hospital 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) the Hospital shall pay £500 to Miss K for the non-financial injustice she has experienced.

Complaint summary

2. Miss K's complaint concerns the information she was given in the run up to her retirement. Miss K says that she was given misinformation which led her to retire. She contends that this irreversible decision has limited her future income.

Background information, including submissions from the parties

3. On 19 September 2016, Miss K emailed the Hospital's pension department requesting a pension quotation for early retirement.
4. On 21 September 2016, the Hospital responded and said it was unable to give an accurate quotation at that time. It said that NHS Business Services Authority (**NHS BSA**) provided Annual Benefit Statements, which could be accessed online. It also confirmed that the online portal included a calculator that could estimate early retirement benefits. Miss K has told us that she was unable to access figures online for her service within the 1995 Section. As part of her submissions to this office, she supplied a screenshot that showed that she was unable to access the 1995 Section Benefit Statement. The screenshot also showed that she was told to contact her employer for further information.
5. In January 2018, Miss K phoned the Hospital and requested early retirement figures.
6. On 22 January 2018, NHS BSA sent a Benefit Statement for the 1995 Section of the Scheme. The Hospital forwarded this on to Miss K. The Benefit Statement confirmed that Miss K's Normal Pension Age (**NPA**) was 60. Under the Standard Benefits

heading it said, "Benefits at 31/3/2015", so Miss K thought that the benefits had already been reduced with reference to her early retirement. The benefits were outlined as a lump sum of £21,147.48 and a pension of £7,049.16 per annum.

7. In April 2018, following a period of sickness, Miss K had a meeting with her manager, during which she said that she was considering early retirement. Following this meeting, Miss K did not return to work.
8. On 23 April 2018, Miss K emailed the Hospital's pension department and said that she was considering taking early retirement on 31 August 2018.
9. On 24 April 2018, Miss K was sent a benefits claim form (**AW8 Form**). It also included a printed copy of the NHS Pension Retirement Guide (**the Retirement Guide**). Miss K said that she did not receive the Retirement Guide.
10. On 30 April 2018, the Hospital sent an AW295 Form to NHS BSA. The AW295 Form is a request for an early retirement estimate.
11. On 2 May 2018, Miss K completed her section of the AW8 Form. The AW8 Form included a declaration which said that Miss K had read the Retirement Guide. The Retirement Guide said:

"...it is advisable to obtain an estimate of your benefits before you complete the relevant retirement application form. This will show an estimate of the maximum lump sum you may be able to take (this amount may exceed the tax free amount) and how much your pension would be reduced to."
12. On 9 May 2018, Miss K provided the Hospital with her completed AW8 Form.
13. On 10 May 2018, a second Benefit Statement for the 1995 Section of the Scheme was sent to Miss K. Again, this showed a projection of benefits that would be available to Miss K from the age of 60. This was issued with a compliment slip which explained that the "Benefit Statement had been updated to 31 March 2018". It also said that Miss K was only able to access her benefits from the 1995 Scheme as she had only reached her minimum pension age of 50. It did not explicitly tell Miss K that her benefits would be reduced for early payment.
14. On 28 June 2018, in response to the AW295 Form, NHS BSA provided the Hospital with Miss K's early retirement estimate. The Hospital forwarded this to Miss K on 10 July 2018; however, it was sent to an incorrect address. The estimate said that Miss K's projected benefits consisted of a lump sum of £15,537.99 and an annual pension of £4,543.03.
15. In July 2018, NHS BSA wrote to Miss K and provided her with retirement figures. The figures were not what Miss K expected, as she had expected the benefits to be those quoted in her Benefit Statement. So, she contacted the Hospital, on 25 July 2018, to question them.

16. On 13 August 2018, the Hospital forwarded Miss K a copy of the early retirement estimate that was originally forwarded to her on 10 July 2018.
17. On 23 August 2018, the Hospital responded to Miss K's complaint. It said that the Benefit Statements that were sent to Miss K stated that her NPA was 60 and that the statements were estimated quotations only. It also said that it would have expected Miss K to have waited for NHS BSA to have provided her with an AW295 response prior to her completing the AW8 Form.
18. On 31 January 2020, one of our Adjudicators spoke with Miss K to obtain more information on her circumstances around the time of her retirement. At the time she received the benefit statements, she was off work due to stress and anxiety. She provided more information regarding her personal circumstances and said that, in March 2017, her daughter had a baby. Later that year, in June 2017, Miss K's father passed away. Miss K explained that her mother has mental health difficulties, so she had a lot to deal with. She continued to work until it all got too much for her to handle, which is why she had a period of sick leave.
19. Miss K said that she enjoyed her job, so she left with a heavy heart. She stated that, had she been provided with the correct figures from the outset, she would have remained on sick leave until she felt better and she would have returned to work. Miss K was only provided with the correct figures after she had left the Hospital. By that time, someone had already stepped into her role, so she could not have returned to her previous position. She also confirmed that she has been unable to return to any work since retiring, she said that this was due to her personal circumstances and stress.

Adjudicator's Opinion

20. Miss K's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of the Hospital. The Adjudicator's findings are summarised below:-
 - Miss K has complained that the Hospital sent her incorrect figures which she relied on when she decided to retire. However, the quotation of incorrect benefits does not automatically entitle Miss K to the incorrect, higher figures. In order to make a defence of detrimental reliance Miss K would have to successfully argue that there was a causal link between the receipt of the incorrect information and her decision to retire.
 - Since leaving her employment, Miss K has been paid the correct level of benefits; however, she has not returned to employment. In order to evidence her argument that she would have continued in her role, the Adjudicator said that Miss K would have needed to have gained some form of new employment to supplement her benefits. As Miss K has not done so, the Adjudicator was of the view that it was hard for her to prove that she would have delayed taking her benefits and remained in employment.

- The Adjudicator said that Miss K had a responsibility to mitigate any potential losses. One way of mitigating her loss would be to return to work. Miss K has not done so; therefore, she cannot prove financial loss.
- Having studied the evidence, the Adjudicator was not persuaded that the Benefit Statements were the sole reason Miss K retired. Therefore, any injustice that has been suffered is non-financial.
- Miss K requested early retirement figures from her employer. Her employer should have been aware that she was considering retirement following her period of sick leave. The Adjudicator's view was that the Hospital should have done more to ensure that the Benefit Statements included an early retirement reduction. Failing this, it should have made it clear to Miss K that the figures she received were subject to a reduction for early retirement.
- There was also a missed opportunity for the Hospital to ensure that the quotation was sent to the correct address. Although the Hospital followed procedure and forwarded NHS BSA quotation directly to Miss K, it should have ensured that it was forwarding the quotation to the correct address. It did not do this, which meant that Miss K did not receive the correct quotation at the earliest opportunity.
- The Adjudicator felt that the maladministration led to significant distress and inconvenience. As a result, it was the Adjudicator's opinion that the complaint should be partly upheld and £500 should be paid to Miss K in respect of the distress and inconvenience caused by the maladministration.

21. Miss K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

22. Miss K provided her further comments which do not change the outcome. Miss K has argued that:

- It was the Hospital who had made the error, she should not be financially disadvantaged because of it. She has said that the error has caused her financial difficulties.
- She loved her job and would not have left had she been provided with the correct benefits.
- She did not receive the Retirement Guide, so she was not aware that her Benefit Statements did not include the early retirement reductions.
- The circumstances of her case are similar to another case determined by an Ombudsman (reference 86135/1). In this case the Applicant was provided an early retirement quotation that was not actuarially reduced for early payment. As a result of this incorrect quotation, the Applicant retired. The complaint was upheld; so, Miss K has argued that hers should also be upheld.
- Her mental health has deteriorated as a result of this issue.

Ombudsman's decision

23. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Miss K for completeness.
24. Miss K has said that it was the Hospital who made the error, so it should be the Hospital who is financially responsible. However, benefits can only be paid in accordance with the Scheme Rules. Miss K would be entitled to redress from the Hospital, if she was able to evidence reasonable reliance on the incorrect Benefit Statements.
25. I do not find that the Benefit Statements were the sole reason she retired. Since leaving her position at the Hospital, Miss K has not returned to any form of employment. If Miss K was to successfully argue that she would have remained in post, I would have expected her to have taken up some form of alternative employment to supplement her benefits. Miss K has told us that she loved her job and, whilst I acknowledge that this may have made it harder to find alternative employment, I would still have expected her to have attempted to find employment elsewhere.
26. When assessing potential financial loss, I would expect applicants to have taken steps to mitigate any losses. In cases such as this one, one way to mitigate the loss would have been to return to work. Miss K has said that she has been unable to do so due to poor health. Whilst I have sympathy for the position she finds herself in, I find that this limits her claim for financial loss.
27. Miss K has argued that I should uphold the complaint as the facts of the complaint are similar to another complaint which was upheld (reference 86135/1). In that complaint, the Applicant increased her hours in another job role once she had been provided with the correct information. She evidenced that she was able to continue in work. Whereas, Miss K has not returned to work following her period of sickness and subsequent retirement. Therefore, I cannot find that she would have continued to work had she been given correct information.
28. The Benefit Statements Miss K is attempting to rely on show a NPA of 60. Miss K has argued that this was a statement of fact and so it was reasonable to believe that the figures in the NPA included reductions. I do not find this argument persuasive. Given that the Retirement Guide highlighted the need for early retirement estimates to include the reductions, Miss K should have asked more questions to ensure she was relying on the correct figures.
29. I am not persuaded that the Benefit Statements were the sole reason Miss K retired. In addition, I do not find sufficient evidence that it was reasonable for Miss K to have relied on the incorrect information; any injustice that has been suffered is non-financial.
30. There is no doubt that Miss K would have been disappointed to discover that her benefits were less than she expected to receive. She would have experienced a

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significant loss of expectation and suffered significant distress and inconvenience for which she should receive an award.

31. I partly uphold Miss K's complaint and make the direction below.

Directions

32. Within 21 days of the date of this Determination, the Hospital shall pay Miss K £500 in respect of the non-financial injustice she has suffered which has caused her significant distress and inconvenience.

Anthony Arter

Pensions Ombudsman
27 March 2020