

Ombudsman's Determination

Applicant	Mrs R
Scheme	NHS Pension Scheme
Respondents	NHS Pensions

Outcome

1. I do not uphold Mrs R's complaint and no further action is required by NHS Pensions.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R has complained that her request for trivial commutation was not actioned. She has also complained that she has not received the £14,972.58 she was told she was entitled to.

Background information, including submissions from the parties

4. Mrs R was a member of the 2008 Section of the Scheme from September 2009 to May 2012. In 2018, Mrs R applied for and was granted early payment of her deferred benefits on the grounds of ill health.
5. Mrs R completed an application form and submitted this, together with a letter saying she would like to take her pension as a one-off lump sum. Her application for benefits was authorised by NHS Pensions, on 27 February 2018, but her request for a one-off lump sum was overlooked. NHS Pensions wrote to Mrs R, on 27 February 2018, notifying her that a lump sum and pension would be paid to her bank account.
6. Mrs R queried why she had not been awarded a one-off lump sum. NHS Pensions issued the required paperwork on 5 March 2018. Mrs R was given three options: to continue receiving a monthly pension; to take a trivial commutation lump sum; or take her pension as a trivial commutation lump sum and exchange part of her pension for a pension commencement lump sum. Mrs R was told that, if she chose options 2 or 3, she would be required to repay the pension she had already received. She was told that this would be done by offsetting the amounts she had already received against her trivial commutation lump sum. The options were set out as follows:

“Benefit entitlement - Option 1

Pension from 15/01/2018 £418.22 a year

Pension commencement lump sum £2,788.11 ...

Benefit entitlement - Option 2

If you would like us to consider converting your NHS pension to a trivial commutation lump sum payment, in addition to any pension commencement lump sum you are automatically entitled to the amount will be:

£14,972.58

Important

2008 Section/2015 Scheme – 75% of the trivial commutation lump sum will be taxed as income tax as you are not entitled to an automatic lump sum.

Benefit entitlement - Option 3

If you would like us to consider converting your NHS pension to a trivial commutation lump sum payment, after first giving up the maximum amount of pension for a pension commencement lump sum, the amount will be:

£9,625.30

This amount would be paid in addition to your pension commencement lump sum of:

£2,788.11”

7. Mrs R returned the paperwork on 23 March 2018. She selected option 2. Payment of the revised benefits was authorised on 28 March 2018. NHS Pensions wrote to Mrs R, on 29 March 2018, informing her that her pension would be converted into a one-off lump sum of £11,229.43. It said this would be paid in addition to a pension commencement lump sum of £3,743.15 (of which £2,788.11 had already been paid).
8. Mrs R queried the amount of the lump sum she had received. In response, NHS Pensions said that she had been informed that any pension she had already received would be offset against her trivial commutation lump sum.
9. Mrs R brought a complaint under the Scheme’s two-stage internal dispute resolution (IDR) procedure. At stage one, NHS Pensions said, as a member of the 2008 Section, Mrs R was not automatically entitled to a pension commencement lump sum. Her standard annual pension, based on her service and pensionable pay, was £650.56. She had the option to take a maximum pension commencement lump sum of £2,788.11 and a reduced annual pension of £418.22. Because Mrs R had ticked a box on her application form requesting the maximum lump sum, it had processed her benefits on the basis of a pension commencement lump sum and reduced pension.

10. NHS Pensions said, when Mrs R had pointed out its processing error, it had sent her three options (see above). It said option 2, which Mrs R had selected, was to commute her standard pension of £650.56 for a lump sum of £14,972.58. It said, strictly speaking, the whole of the £14,972.58 was taxable, but HMRC allowed it to pay 25% (£3,743.15) as a tax-free lump sum.
11. NHS Pensions noted Mrs R's criticism of its 5 March 2018 letter. It said it would review the wording but referred her to the section headed "Important" (see above).
12. Mrs R was not satisfied with the outcome of the stage one review and referred her complaint to stage two. She said she was still awaiting payment of the pension commencement lump sum referred to in the 5 March 2018 letter. NHS Pensions issued a stage two decision on 14 September 2018. It acknowledged that Mrs R's original request for trivial commutation had been missed. It said the information sent to Mrs R on 5 March 2018 was correct and she was entitled to a lump sum of £14,972.58. NHS Pensions acknowledged that the wording of option 2 could have been confusing if read in isolation and said it had amended it. It went on to confirm that Mrs R had been paid:-

1 March 2018	£2,788.11
5 April 2018	£62.73
11 April 2018	£892.31
Total	£3,743.15 tax free cash sum
13. NHS Pensions said Mrs R was due a further £11,229.43 (gross) which had been reduced to £7,222.06 after tax. It said Mrs R had been paid £14,972.58 (gross) or £10,965.21 (net).
14. NHS Pensions upheld Mrs R's complaint with regard to its initial failure to action her request for a trivial commutation lump sum. It partially upheld her complaint with regard to her expectation that she would receive a larger payment. NHS Pensions offered Mrs R £500 for distress and inconvenience. It has confirmed that this offer is still open to Mrs R.

Adjudicator's Opinion

15. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS Pensions. The Adjudicator's findings are summarised below:-
 - NHS Pensions had acknowledged that it overlooked Mrs R's request for a trivial commutation lump sum initially. This did amount to maladministration on its part. However, in order to uphold Mrs R's complaint, it was necessary also to consider whether she had sustained injustice as a consequence and, if she had, whether appropriate steps had been taken to redress this.

- Mrs R had contacted NHS Pensions soon after it had informed her that it was intending to pay her a pension and lump sum. It issued revised paperwork within three working days of being alerted to its error.
- NHS Pensions gave Mrs R three options: to continue to receive a pension and a lump sum; to take her standard pension as a one-off payment; or to take her reduced pension as a one-off lump sum, together with the optional lump sum it had already paid. Mrs R chose option 2; that is, to take her standard pension as a one-off lump sum.
- In its letter of 5 March 2018, NHS Pensions had said the option 2 lump sum would be £14,972.58 “in addition to any pension commencement lump sum [Mrs R was] automatically entitled to”. However, it had also said:

“Important

2008 Section/2015 Scheme – 75% of the trivial commutation lump sum will be taxed as income tax as you are not entitled to an automatic lump sum.”

- Mrs R had said that she was expecting to receive £14,972.58 plus £2,788.11. However, this would only have been the case if she had been entitled to an annual pension of £650.56 plus an automatic pension commencement lump sum of £2,788.11. As a member of the 2008 Section, Mrs R was not entitled to an automatic pension commencement lump sum. In order to receive any pension commencement lump sum, Mrs R would have been required to give up part of her standard pension. For example, in order for her to receive the lump sum of £2,788.11, Mrs R’s annual pension would have been reduced from £650.56 to £418.22.
- NHS Pensions had said that, read in isolation, the wording of option 2 could have been confusing. In the Adjudicator’s view, there was sufficient information in the 5 March 2018 letter to make Mrs R aware that she was not entitled to an automatic pension commencement lump sum. Mrs R’s expectation of receiving £14,972.58 plus £2,788.11 arose because, unfortunately, she appeared to have overlooked the “Important” warning in the following paragraph. It did not arise as a result of maladministration on the part of NHS Pensions.
- Having opted to take her standard pension (£650.56) as a one-off lump sum, Mrs R was only entitled to £14,972.58 (gross). Under HMRC rules, NHS Pensions was able to pay 25% of the gross lump sum tax-free; £3,743.15. It had already paid Mrs R £2,788.11 plus £62.73 (£2,850.84). It then paid Mrs R £892.31 which was the balance of the tax-free element of her trivial commutation lump sum. The remaining 75% (£11,229.43) is taxable and NHS Pensions had paid Mrs R the net amount; £7,222.06. Mrs R had been paid what she is entitled to.

- NHS Pensions had offered Mrs R £500 for any distress and inconvenience arising out of its failure to action her request for trivial commutation in the first instance. This was in line with the guidance issued by the Ombudsman. In the Adjudicator's view, any injustice arising out of NHS Pensions' initial maladministration had been appropriately redressed. She considered that there were no further grounds for upholding Mrs R's complaint.
16. Mrs R did not accept the Adjudicator's Opinion. Whilst she accepted that she had been paid what she was entitled to, she did not feel that the £500 adequately compensated her for the time, effort and stress of sorting the error out. She pointed out that none of this would have arisen if NHS Pensions had not made a mistake in the first place. She recalled having spoken to two advisers who confirmed her understanding of the situation.
17. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs R for completeness.

Ombudsman's decision

18. Mrs R is now reassured that the payment she has received is the amount to which she is entitled. However, she feels that the amount offered by NHS Pensions to redress the non-financial injustice arising out of its error is insufficient.
19. An award for non-financial injustice is intended to acknowledge that the individual has been inconvenienced or distressed by the maladministration identified. In determining an appropriate amount, I will take account of the particular circumstances of the case. However, I have also published some general guidelines. Parties, such as NHS Pensions, may consult these guidelines in order to formulate an offer of redress intended to resolve a complaint.
20. The offer of £500 from NHS Pensions equates to non-financial injustice which I have described in my guidelines as "significant". This is intended to recognise injustice which has: caused the individual significant inconvenience or distress; has occurred on one or more occasions; the effects of which were short term; and where the erring party has taken reasonable steps to put matters right.
21. Mrs R's complaint arises out of one error by NHS Pensions; the oversight in not actioning her request for a one-off payment on retirement. The necessary paperwork was issued very soon after the omission had been brought to its attention. I find that the non-financial injustice arising out of NHS Pensions' maladministration is best described as "significant". I find, therefore, that the offer from NHS Pensions provides appropriate redress for its error. There is no unaddressed injustice requiring me to make further directions.

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22. Therefore, I do not uphold Mrs R's complaint. Mrs R should contact NHS Pensions if she wishes to accept its offer of £500 in respect of her distress and inconvenience.

Anthony Arter
Pensions Ombudsman

29 May 2019