

Ombudsman's Determination

Applicant	Mrs W
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHSBSA)

Outcome

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

Complaint summary

3. Mrs W's complaint is that NHSBSA incorrectly informed her that she could not retire, and this caused her significant distress and inconvenience.

Background information, including submissions from the parties

4. Mrs W was a member of the Scheme between 15 August 1983 and 13 August 1988.
5. On 1 September 1997, Mrs W re-joined the Scheme which is now known as the 1995 Section.
6. On 1 June 2016, Mrs W joined the 2015 (Career Average Revalued Earnings (**CARE**)) Section of the Scheme and all her previously accrued pension was treated "separately for pension purposes".
7. On 20 February 2018, NHS Pensions received Mrs W's application for voluntary early retirement, with effect from 31 March 2018. The application stated Mrs W elected only to request payment of her 1995 Section Scheme benefits.
8. On 19 March 2018, NHSBSA wrote to Mrs W's employer stating that as she was now a member of 2015 Section, she could not elect to retire before age 60.
9. On 25 March 2018, whilst on holiday, Mrs W was informed by her employer that her application was refused.
10. On 26 March 2018, Mrs W and her employer separately contacted NHSBSA to query its decision. Mrs W says the representative of NHSBSA could not explain the reason

for her application being refused and it would be 10 working days before NHSBSA would contact her again.

11. On 27 March 2018, Mrs W's employer telephoned NHSBSA and maintained that Mrs W only sought payment of her 1995 Section Scheme benefits.
12. On 6 April 2018, NHSBSA completed processing Mrs W's election.
13. On 11 April 2018, Mrs W received written confirmation from NHSBSA that her Scheme benefits would be paid.
14. On 13 April 2018, Mrs W's lump sum was paid. Her monthly pension was payable in arrears and the first payment was correctly made at the end of April.
15. On 23 April 2018, Mrs W complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She said that discovering her application was rejected whilst on holiday was stressful and she did not understand why NHSBSA had not contacted her directly.
16. On 21 June 2018, NHSBSA provided its Stage 1 IDRP response and upheld Mrs W's complaint because its letter of 19 March 2018 was incorrect, and her lump sum was paid 12 days late. NHSBSA apologised for the distress and inconvenience it caused her.
17. On 17 September 2018, Mrs W escalated her complaint to Stage 2 of the IDRP. She said NHSBSA had not explained the reason for its error or failure to contact her. She also argued NHSBSA's "maladministration of my application was extremely distressing and completely ruined a holiday" and this justified her seeking compensation.
18. On 23 October 2018, NHSBSA sent Mrs W its Stage 2 IDRP response. NHSBSA said it could not explain the reasoning behind the incorrect letter sent to Mrs W's employer. However, as Mrs W was still in employment until 31 March 2018, NHSBSA contacted her employer directly. It also said that as Mrs W's application was submitted less than 3 months from her chosen retirement date, it could not guarantee to process and pay her benefits from her first day of retirement. NHSBSA upheld her complaint in part for the misinformation but it did not agree that further compensation was appropriate.

Adjudicator's Opinion

19. Mrs W's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator's findings are summarised below:-
 - The distress and inconvenience experienced by Mrs W was nominal.

- Although, Mrs W did not refer to the late payment of her lump sum as a core element of her complaint, it was a material fact and should reasonably be addressed when considering the non-financial injustice she suffered 'in the round'.
 - NHSBSA upheld Mrs W's complaint and offered her an apology for its error at the earliest opportunity. Consequently, further redress was not appropriate, based on the facts of the case.
20. Mrs W did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs W provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs W for completeness.

Ombudsman's decision

21. NHSBSA did not inform Mrs W directly that it had refused her application. Mrs W discovered the error through communication with her employer. Mrs W was still in employment and I consider it reasonable for NHSBSA to deal solely with her employer. As the matter was a straightforward one, I find that Mrs W's employer and NHSBSA would reasonably have ascertained the correct position and rectified the mistake without needing her involvement.
22. In her comments, Mrs W acknowledges it is difficult to quantify a subjective concept such as distress. She argues that she had made a "difficult and life-changing decision" in difficult personal circumstances and was 'devastated' to learn her application was refused. Some distress was undoubtedly caused to Mrs W; however, I find that it was nominal, and I do not agree that an award for non-financial injustice is appropriate in this case.
23. Each case is assessed on its own facts and merits. It does not necessarily follow that claiming a high level of distress will result in an award being made. Awards are designed as a remedy to an injustice, not to penalise a respondent for a mistake. In this case NHSBSA made a single error, all the events occurred over a short period of time and it was rectified at the first opportunity. Consequently, I find NHSBSA's apology to be adequate redress under the circumstances.
24. Therefore, I do not uphold Mrs W's complaint.

Anthony Arter

Pensions Ombudsman
8 April 2019