

Ombudsman's Determination

Applicant	Miss E
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Miss E's complaint and no further action is required by NHS BSA.

Complaint summary

2. Miss E has complained that she was not able to commute her benefits from the age of 55. She argued that she was incorrectly told that it was possible for her to commute her benefits at 55; consequently, she borrowed money from her parents in order to fund home improvements.
3. Miss E has complained that she was given incorrect information, which led her to believe that her benefits would be paid from her 55th birthday.

Background information, including submissions from the parties

4. On 20 February 1990, Miss E left her employment with the NHS and left the Scheme.
5. In February 1991, Miss E confirmed that she did not want to transfer-out her benefits. As a result, she became a deferred member.
6. On 1 December 2007, NHS BSA provided Miss E with an estimate of her benefits. It estimated that the benefits payable at 60 would provide an annual benefit of £1,026.98 and a lump sum of £3,080.93.
7. On 7 October 2015, Miss E was sent an updated estimate. This said that her Normal Pension Age (**NPA**) was 60. It also confirmed that she had 4 years 155 days' worth of membership. Her annual benefits were predicted to be £1,337.26, whilst her lump sum was estimated to be £4,011.75.
8. On 23 May 2016, NHS BSA produced a further benefit estimate. It also confirmed Miss E's NPA was 60. Her benefit estimation mirrored the figures produced on 7 October 2015.

9. On 3 April 2017, Miss E called NHS BSA to find out when she could take her benefits. Miss E was told that she could take her pension at 55 and it was worth £23,000. She was told that she could take this via trivial commutation.
10. On the same day, NHS BSA issued a copy of the 1995/2008 Scheme Guide, a Trivial Commutation factsheet (**the Factsheet**) and a link to the Early Retirement Calculator (**the Calculator**). The Factsheet outlined some restrictions where it was not possible to pay a small pension as a one off payment, this included:-

“If you are a deferred member still under your Normal Pension Age who left the Scheme before 31 March 2000.”
11. After receiving this information, Miss E spent around £10,000 on her property in Spain. In order to fund the improvements, she borrowed money from her parents. She said that she borrowed the money on the basis that she could repay it when she took her Scheme benefits.
12. On 29 June 2018, Miss E called to start the process of taking her benefits and was told that she was unable to. She was told that she could only take her benefits from age 60 and her benefits weren't as much as she had been told during the April 2017 phone call.
13. On 18 July 2018, NHS BSA wrote to Miss E regarding her complaint. It confirmed that it did not have a call recording from the conversation that took place in April 2017. It said that the call notes explained that she was issued the Factsheet and had been told to use the Calculator. It confirmed the NHS Pension Scheme 1980 Regulations (**the Regulations**) did not allow members in Miss E's position to take early retirement. Miss E's NPA, in accordance with Regulation 8(ii) (see Appendix), was 60. It explained that Regulation 54 (see Appendix) allowed for retirement from age 55, but only if the member was female and had spent the last five years of their employment within the Scheme.
14. On 25 September 2018, NHS BSA completed Stage 1 of its internal dispute resolution procedure (**IDRP**). It said that Miss E left pensionable service with the NHS on 20 February 1990, so she was subject to the Regulations. It said that the provision for early retirement from the Scheme was not introduced until 30 March 2000 and only allowed members who had active membership between 31 March 2000 and 5 April 2006 to retire early. NHS BSA confirmed that it was unable to uphold Miss E's complaint as she did not meet the criteria set out in the Regulations.
15. Miss E responded and said that she understood that the policy cannot be changed but felt that NHS BSA had ignored the main part of her complaint. She said that it had not addressed the fact that she was given incorrect information that she relied on.
16. On 28 November 2018, NHS BSA completed Stage 2 of its IDRP. It said that because Miss E left the Scheme prior to her 55th birthday, her benefits were payable at age 60, in accordance with Regulation 8. It confirmed that following the call of 3 April 2017, Miss E should not have been sent the Calculator, as she had left the

Scheme prior to 1995, so she did not have an entitlement to claim actuarially reduced benefits. Notwithstanding, it said that it inputted the details from Miss E's last estimate, dated 23 May 2016 into the Early Retirement Calculator and this confirmed that Miss E would have been entitled to a lump sum of £5,749.08. Which was significantly below the £10,000 Miss E has spent in anticipation of early payment of benefits.

17. In conclusion, NHS BSA admitted that it had provided incorrect information which could have led to Miss E believing that she could take her benefits from age 55. It apologised for sending Miss E a link to the Calculator, as she was not eligible for early retirement. However, it said that the lump sum she expected did not reflect the £10,000 she had spent on her property. It confirmed that Miss E's benefits will be payable from age 60.

Adjudicator's Opinion

18. Miss E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- Miss E had only accrued 4 years 155 days' worth of Scheme membership. As a result, Regulation 54 was not applicable to her and her NPA remained 60.
- Whilst the Adjudicator accepted that it was likely Miss E was told incorrect information during the 3 April 2017 telephone conversation, he did not agree that it was reasonable for Miss E to have relied on this information.
- The Adjudicator was of the opinion that the Factsheet issued on 3 April 2017 clearly showed that she was unable to commute her benefits until NPA. As a result, the Adjudicator felt that Miss E should not have relied on the information she was provided on the phone.
- Miss E did not receive confirmation of her commutation figures in writing. The Adjudicator considered this should have been done before Miss E relied on any information.
- In addition, the Adjudicator also explained that it was hard for Applicants to claim reliance on incorrect information when they had chosen to "jump the gun". He said that Applicants could not recover money that was spent before benefits were paid, no matter how strongly they were reassured that it is rightfully theirs. Given that Miss E spent the money prior to her benefits being confirmed, the Adjudicator did not agree that she could recover the money.
- Although the Adjudicator accepted that Miss E was provided with incorrect information and an unsuitable calculator, the Adjudicator was not persuaded that the maladministration caused significant distress and inconvenience. The incorrect information was supplied on the same day that NHS BSA provided the Factsheet.

The Factsheet was clear in highlighting that deferred members, who had left the Scheme prior to 31 March 2000, could not receive commuted pension benefits prior to their NPA. Although Miss E was given incorrect information over the phone, NHS BSA sent a document that contained the correct information on the same day. As a result, I am not persuaded that the maladministration was significant enough to warrant an award for distress and inconvenience

19. Miss E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
20. Miss E provided her further comments which do not change the outcome. Miss E has argued that:-
 - She expected the information she was given to be correct.
 - She should not be expected to pay for the incorrect information she had been given.
 - She has been financially disadvantaged. She would not have borrowed the money or invested in the property, had she been given the correct information. In addition, property prices in Spain have declined, so even if she were to sell the property in order to pay her parent's back, she would lose further money.
 - Her situation is causing her stress. Without her benefits, she is unable to pay her parents back.
21. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss E for completeness.

Ombudsman's decision

22. Miss E has said that she relied on the incorrect information, which caused her to suffer financial loss. In order to be entitled to redress, Miss E would have to demonstrate that she reasonably relied on the incorrect information.
23. Miss E has complained that she was incorrectly told that she could commute her benefits at 55 for a one-off payment of £23,000. As a result of this incorrect information, she says she borrowed money to complete home improvements. However, the Regulations do not allow her to commute her benefits prior to her NPA; so, she is unable to repay her borrowing.
24. On 3 April 2017, Miss E had a telephone conversation with NHS BSA, it explained that she could commute her benefits at age 55. On the same day, NHS BSA issued Miss E with a Factsheet which made it clear that she could not access her benefits until her NPA. Whilst Miss E was not at fault for the incorrect information she received over the telephone, she cannot rely on a mistake that she ought to have identified herself. Given that she was sent the Factsheet highlighting restrictions the same day as the telephone call, the mistake should have been evident. Consequently, I do not agree that Miss E can rely on the incorrect figures.

25. In her response to the Adjudicator's opinion, Miss E has argued that, as a layperson, she cannot be expected to realise that she was given incorrect information during the telephone call. If the telephone call had been all of the information given to her that argument might have some force. However, it was not. The Factsheet which she was sent explicitly outlined circumstances where commutation was not available. One of these circumstances was "...a deferred member still under Normal Pension Age who left the Scheme before 31 March 2000". I find this sufficiently clear for a layperson to understand, so I am satisfied that Miss E should have been aware that she could not commute her benefits prior to her NPA.
26. Miss E has argued that we cannot dismiss her claim to financial loss by saying that the money was borrowed, so too remote to the maladministration. She says that she will have to repay the money; so, when she does so, she will suffer a financial loss.
27. My findings are that there is no evidence that Miss E was given a clear and unequivocal statement upon which it was reasonable to rely. For that reason her claim cannot succeed even if she will in future incur a financial loss. It was not reasonable for Miss E to have relied solely on the information received during a phone call to make such a significant decision as taking borrowing, when she had also received written information that contradicted what she had been told.
28. Turning now to the question of financial loss, borrowing and having to repay that borrowing is not itself a loss. There is no connection between the downturn in Spanish property prices and the borrowing.
29. Although I agree that the provision of incorrect information amounts to maladministration, I am not persuaded that it caused significant distress and inconvenience. Miss E was issued with the Factsheet which clearly stated that she could not commute her benefits until NPA. As a result, I believe the maladministration to be limited. I do not agree that she has suffered a level of distress and inconvenience which would warrant an award.
30. Therefore, I do not uphold Miss E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
6 December 2019

Appendix

NHS Pension Scheme 1980

Regulation 8 – Officer’s pension and retiring allowance

- (1) On ceasing to be an officer, a person shall be entitled to receive from the Secretary of State-
- a. an annual pension if-
 - i. he has completed 2 years’ service and is permanently incapable of discharging efficiently the duties of his employment by reason of physical or mental infirmity; or
 - ii. he has attained the age of 60 years;

Regulation 54 – Female Nurses, Physiotherapists, Midwives and Health Visitors

These regulations, in their application to females who for the whole of the last 5 years of service in the employment of an employing authority of an employment in which they are subject to a health service scheme are nurses, physiotherapists, midwives or health visitors, shall have effect subject to the modification that in regulation 8(1)(a)(ii) 55 years shall be substituted for 60 years.