

Ombudsman's Determination

Applicant	Mrs N
Scheme	NHS Pension Scheme (the Scheme)
Respondents	Equiniti ICS (Equiniti) NHS Business Services Authority (NHS BSA)

Outcome

1. Mrs N's complaint against NHS BSA and Equiniti 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) Equiniti shall pay Mrs N £500 for significant distress and inconvenience caused.

Complaint summary

2. Mrs N complains that:
 - In 2007 she was incorrectly told that she was purchasing 7 years 119 days of Added Years.
 - When she asked Equiniti in 2014 and 2017 about the number of Added Years she was purchasing, Equiniti incorrectly assured her that she was purchasing 7 years 119 days.

Background information, including submissions from the parties

3. On 8 January 2007, the Healthcare Trust (**the Employer**) wrote to Mrs N following her enquiry about increasing her pension benefits by purchasing Added Years. The Employer said, "You will be purchasing 7 years and 119 days, at an extra 6.52% pension contributions, with the arrears of £326.86 being collected over 10 months commencing January 2007."
4. The Employer enclosed an AB54 Election Form (**EF**) for Mrs N to complete and return in order to confirm she wished to purchase Added Years. The declaration on the EF said, "I have read the Scheme booklet "Increasing your Benefits" (**the Booklet**). Mrs N signed and returned the EF in 2007.

5. In October 2010, Mrs N was provided with her personal Choice Statement to decide whether she wished to stay in the 1995 Scheme or move to the 2008 Scheme. This Choice Statement set out that by age 60 Mrs N would have purchased 2 years 181 days of Added Years. Mrs N did not query this at the time and decided to stay in the 1995 Scheme.
6. On 20 March 2014, Mrs N emailed the Employer to check she was paying as much as possible into the Scheme. She confirmed she worked part-time and asked if her final pension was a "percentage of her part-time salary or her full-time equivalent salary".
7. On 24 March 2014, Equiniti confirmed it had telephoned NHS BSA to check her Added Years contract and explained that said she was purchasing 7 years 119 days of Added Years and when the NHS Pensions calculated her final award, it would use the "full-time equivalent" salary.
8. On 1 April 2015, Mrs N became a member of the 2015 Scheme.
9. On 13 January 2017, Mrs N emailed the Employer and asked if Added Years were purchased cumulatively, as her most recent benefit statement showed that she had only purchased 264 days, but after 24 years would have purchased 7 years 119 days. She wanted to increase her part-time hours from 12 to 15 per week and asked about the difference this would make to her pension contributions and her final pension.
10. On 24 January 2017, Equiniti replied saying: -
 - Mrs N was correct and the amount of Added Years she purchased increased on a cumulative rate, so the closer she got to retirement, the higher the amount she purchased.
 - If Mrs N worked more hours this would increase her pension, as it was based on her pay and the amount of service in the Scheme.
 - If Mrs N received a higher pensionable pay, she would also pay more contributions each month.
11. On 2 February 2017, Mrs N asked Equiniti, "...in summary if I continue to pay the same amount for my added years, by the time I retire on 29/1/2030. I will definitely have purchased an additional 7 years and 119 days?".
12. On 22 February 2017, Equiniti confirmed if Mrs N completed her Added Years contract, she would get the full 7 years 119 days of Added Years.
13. On 20 February 2018, Mrs N emailed the Employer to query her recently received benefit statement. She explained about the previous emails and said she was still worried that the number of Added Years was not right, as after 11 years of paying she had only accumulated 336 days.

14. On 2 March 2018, NHS BSA replied explaining that as Mrs N worked part-time, she would not receive the 7 years 119 days of Added Years, as this was based on her working full-time, and her actual Added Years total would be calculated on a pro rata basis.
15. Mrs N complained that at no point was she told by her Employer, NHS BSA or Equiniti that she was not going to get 7 years 119 days of Added Years when working part-time.
16. On 13 April 2018, NHS BSA said the Booklet explained how the Added Years contract worked, and Mrs N had confirmed she had read the Booklet when she signed the EF. NHS BSA said that Mrs N could not purchase the full-time equivalent membership, as she worked part-time. NHS BSA also confirmed the Booklet explained: -

“If you work part-time, the amount of added years or unreduced lump sum you get for your extra contributions or single payment take account of this. For example, if you work half time and apply to buy 10 added years or unreduced lump sum, you will only pay half the extra contributions (or single payment). And you will get 5, not 10 years, of additional benefits. If the hours you work change, your contributions and the benefits you get will also change.”
17. In response, Mrs N said she had simply been asked to complete the EF and sign it. She therefore believed she was purchasing 7 years 119 days of Added Years. When she later asked about the amount, she was purchasing, Equiniti assured her on two separate occasions that she was purchasing 7 years 119 days. Mrs N asked to retrospectively purchase Additional Pension, instead of Added Years in the 1995 Scheme to make up the shortfall and this was turned down as she was no longer a member of this part of the Scheme.
18. On 12 June 2018, NHS BSA replied under the stage one of its Internal Dispute Resolution Procedure (**IDRP**). It did not uphold Mrs N's complaint as the information explaining how the Added Years contract worked was available at the time of Mrs N's initial purchase. NHS BSA said:
 - There was no shortfall in her Added Years as the only way Mrs N could have purchased the 7 years 119 days of Added Years would have been had she worked full-time hours throughout the contract's duration.
 - The 7 years 119 days of Added Years was always quoted as being the maximum available if a member worked on a full-time basis. The reason for this was due to the hours part-time members work, which often fluctuate year to year. It was only when a member came to retire that that the hours worked could be accurately calculated.
 - Mrs N had requested that the Additional Pension applied for under the 2015 Scheme be retrospectively applied to the 1995 Scheme but were no grounds for

this to happen. Any Additional Pension purchase (not the Added Years purchase) would need to be under the 2015 Scheme.

19. On 18 July 2018, Mrs N said:

- She had not received the Booklet and she had not been told that the only way she could have achieved the 7 years 119 days of Added Years was to have worked full-time.
- She disagreed that communications from Equiniti were clear. When she asked if she would receive the full Added Years she was told “yes”.
- She applied for Additional pension in the 1995 Scheme and this was turned down because she was in the 2015 Scheme and any Additional Pension must go into that Scheme.
- Her argument is that if the advice had been clear she would have discovered the apparent shortfall in her Added Years in 2014. Had she been told the correct situation sooner, she would have at least had the chance to purchase Additional Pension in the 1995 scheme to make up the shortfall in the 1995 Scheme.

20. On 4 September 2018, NHS BSA replied under the second stage of its IDRPs, saying:

- Whilst Mrs N maintains she had not received the Booklet, she signed a declaration stating she had read it.
- It would also have been possible to obtain a copy of the Booklet direct from the Scheme website. The main NHS Guide also contained information on how the Added Years worked when she was part-time.
- The Scheme website had a facility to allow a member to ask questions and if this she had accessed the website, this would have provided Mrs N with a copy of an article about part-time work and Added Years.
- The query raised by Mrs N on 13 January 2017, about the cumulative rate of Added Years was answered by Equiniti. There is no trace of any enquiry to NHS BSA about this query.
- In October 2010, a personalised Choice Statement (about the option to change from 1995 Scheme to 2008 Scheme) was issued to Mrs N and showed that by age 60 she would have purchased 2 years 181 days Added Years. There is no evidence to show that Mrs N enquired about the amount at this time.
- The complaint was not upheld as NHS BSA considered Mrs N was aware of the effects of working part-time whilst purchasing Added Years. It was not therefore appropriate to backdate a purchase to allow the additional contributions under the 1995 Scheme.

21. Equiniti later explained that it had now provided guidance to its pensions team regarding the effect that working part-time had on an Added Years contract.

Adjudicator's Opinion

22. Mrs N's complaint was considered by one of our Adjudicators who concluded that further action was required by Equiniti. The Adjudicator's findings are summarised briefly below: -
- The Adjudicator agreed the information provided in 2007 did not set out an adequate explanation that the 7 years 119 days Added Years quoted was the maximum allowable but would be affected by working part-time. However, Mrs N signed the EF to say she had read the Booklet, which clearly stated how Added Years worked when a member of the Scheme worked part-time.
 - There was no shortfall in Mrs N's Added Years in the 1995 Scheme, as she could only have achieved the maximum amount of 7 years 119 days had she worked full-time hours throughout the Added Years contract.
 - In 2014 and 2017, Equiniti did not provide accurate information about Mrs N's Added Years contract. In 2014, Equiniti told her she was purchasing the full 7 years 119 days of Added Years. In 2017, Equiniti told her incorrectly that the Added Years was purchased on a cumulative basis, and she would get the full 7 years 119 days Added Years at the end of the contract.
 - As NHS BSA did not provide any inaccurate information about the Added Years contract, the Adjudicator did not consider that NHS BSA should now backdate any purchase of Additional Pension.
 - Equiniti caused Mrs N significant distress and inconvenience, as it did not provide complete and correct information to her when she made her enquiries about the Added Years in 2014 and again in 2017. Equiniti had acknowledged that it should have provided more information and have now updated its staff about how Added Years are affected by working part-time.
 - The Adjudicator considered that as a result of the answers provided by Equiniti, Mrs N thought she was purchasing the full 7 years and 119 days of Added Years and she had suffered a loss of expectation. The Adjudicator considered an award for £500 for distress and inconvenience should be paid.
23. Mrs N did not accept the Adjudicator's Opinion and Equiniti did not respond. The complaint was passed to me to consider.
24. Mrs N provided her further comments which do not change the outcome. Mrs N has argued that: -
- She had simply completed the sections on the EF as she was instructed to do. When she signed the EF, she was not signing to confirm receipt of the Booklet.

- The Adjudicator said the NHS BSA had not provided inaccurate information, but she considered when Equiniti telephoned NHS BSA in 2014 inaccurate information was given by NHS BSA to Equiniti.
 - Whilst she could never have achieved the 7 years and 119 days Added Years had she known earlier, she could have purchased Additional Pension earlier.
25. NHS BSA said Mrs N signed the EF form acknowledging she had read the Booklet and the information given to Equiniti in 2014 would have been based on the question asked by Equiniti. However, NHS BSA would not have provided a scale amount of Added Years as Mrs N's future working pattern would not have been known.
26. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness.

Ombudsman's decision

27. Mrs N has said she completed the EF in 2007 as instructed. Mrs N also argues she was not made aware the 7 years 119 days of Added Years quoted was the maximum available and she would get less as she worked part-time. However, by signing the declaration on the EF Mrs N was acknowledging that she had read and understood the Booklet which explained how Added Years worked when a member was part-time. It is clear then that Mrs N entered the Added Years contract in 2007 having been provided with all the relevant information and without seeking further clarification.
28. Mrs N clearly wished to maximise the pension benefits payable to her and it was Mrs N's decision to go ahead with the Added Years purchase. Given Mrs N's motivation for entering into the Added Years contract I consider that, on the balance of probabilities, she would still have acted in the same way had she been aware that she could not purchase the maximum number of Added Years
29. Despite the information provided to her Mrs N could never purchase 7 years 119 days Added Years in the 1995 Section as she only worked part-time hours.
30. Mrs N has argued she should be allowed to back date any Additional Pension purchase as NHS BSA had provided inaccurate information to Equiniti about her Added Years contract. I do not consider NHS BSA provided Mrs N directly with the incorrect information about her Added Years contract, but it is clear that in March 2014 Equiniti did not accurately explain how the Added Years contract worked when someone was employed on a part-time basis. Equiniti have acknowledged that it has now updated its staff about this specific issue.
31. I understand that Mrs N wants to be allowed to backdate her Additional Pension purchase. I have therefore considered whether Mrs N can demonstrate that, in March 2014, misinformation provided to her caused her not to purchase Additional Pension while there was still the opportunity to do so as a '95 scheme member. I do not

consider that she can demonstrate that the 2014 statement was unequivocal and that she reasonably relied on it to make a decision, because the terms of the contract which she had signed referred to the explanations in the scheme booklet, she was given much lower accrual figures in 2010 and she did not seek to clarify the contradictions. In the circumstances, I find that the information given to her was incomplete but not unequivocally misleading. It was not until 2017 that Mrs N asked a direct question and was given an unequivocally incorrect answer, by which time she was already a member of the 2015 scheme.

32. Equiniti failed on multiple occasions to provide accurate or complete information to Mrs N in answer to her ongoing questions about the Added Years. As a result, she suffered a loss of expectation over a number of years. I consider this caused her significant distress and inconvenience and I partly uphold Mrs N's complaint.

Directions

33. Within 14 days of the date of this Determination, Equiniti shall pay £500 to Mrs N with regard to the significant distress and inconvenience she has been caused.

Karen Johnston

Deputy Pensions Ombudsman
4 March 2020