

## Ombudsman's Determination

<b>Applicant</b>	Mrs W
<b>Scheme</b>	NHS Pension Scheme - ( <b>the Scheme</b> )
<b>Respondent</b>	NHS Pensions

### Complaint Summary

Mrs W says that NHS Pensions gave her inaccurate retirement estimates when she became 55 up until age 60, her normal retirement age. After receiving notification of the correct award at age 60, she says she was devastated by the realisation that there was a substantial reduction in her Scheme benefits compared to those she expected.

### Summary of the Ombudsman's Determination and reasons

The complaint should be upheld against NHS Pensions because their maladministration has caused Mrs W significant distress and inconvenience.

### Detailed Determination

#### Material facts

1. Mrs W was a deferred Scheme member from 6 July 2001. Her normal retirement date was 19 June 2014, (age 60).
2. Mrs W received a normal retirement estimate from NHS Pensions on 14 June 2010. This showed pensionable pay of £71,516.05. It stated benefits payable at normal retirement age of a pension of £6,464.80 per year and a lump sum of £19,394.39.
3. Mrs W continued to receive yearly statements from NHS Pensions up to age 60 based on "Pay" of £71,516.05. The attached notes said,  
  
"...This statement is an estimated quotation only. The figures contained in it are based upon information that we hold as of the date that this quotation was issued. Exact figures cannot be given until an application for benefits has been made in accordance with the Scheme rules."

4. In July 2014, Mrs W received confirmation from NHS Pensions that her normal retirement benefits at age 60 were a yearly pension of £1,707.30 and a lump sum of £5,121.88.
5. In their letter to Mrs W of 20 August 2014 NHS Pensions explained how the difference had come about;
6. “On 9 September 2011 we produced an estimate of what your benefits might be at age 60. In our calculations we used ...a full time equivalent pensionable pay figure of £71,516.05. This figure was calculated using pay and membership details that had been supplied by your former employers, Thames Hospice Care. I note that Thames Hospice Care had not supplied a part time hours total for the year ending 31 March 2001. A dummy figure of 1 hour had been entered by NHSP to enable your pension record to be updated electronically for that year. This meant however that when your actual pay figure of £2,257.89 was updated to its’ full time equivalent, too few part time hours were used in the calculation. The full time equivalent pensionable pay figure of £71,516.05 was therefore overstated and hence the estimate showed the...incorrect figures... We also produced estimates on 28 August 2013 and 18 June 2014. As both estimates were calculated using the overstated full time equivalent pensionable pay figure of £71,516.05, the amounts quoted were again incorrect.”
7. In their stage 2 internal disputes resolution procedure,(IDRP),response letter to Mrs W of 8 May 2015, NHS Pensions said,

“Each estimate provided to you was accompanied by additional notes, which explained the various terms used in the letter. This describes your pensionable pay as follows:

For estimations purposes, your final pension pay is the pay last reported to us. If you work part - time, we calculate your final pensionable pay as if you work full-time.”
8. In their formal response letter to this office of 24 July 2015 about the complaint, NHS Pensions maintained that they were reliant upon information provided to them by Mrs W’s employer, which was missing. They said that it should have been obvious to Mrs W that the total pensionable pay figure was wrong.
9. Mrs W asserts that the term, “Total Pensionable Pay”, referred to by NHS Pensions in the incorrect estimates could be understood to mean, “pension pot”. She says that if the statements had said pensionable pay per annum, she would have immediately realised an error was made. Mrs W contends that she has not received a clear explanation from NHS Pensions of what the term “Pensionable Pay” actually meant.
10. Mrs W says that had she been given the correct information at age 55 she would have taken her pension then. Consequently, she would have been better off financially. She therefore claims that she should now be awarded an additional 5 years pension from age 55.

11. Mrs W maintains that NHS Pensions ought to have known of the erroneous salary figure before it was discovered that it was incorrect. She says that she had queried her benefit statement each year since 2010 and was told by NHS Pensions the statements were correct.
12. NHS Pensions say that Mrs W made several calls to them. However, the details of the calls do not show that she repeatedly queried the correctness of the retirement estimates she received, for example regarding the pensionable pay figure.
13. In response, Mrs W says that it was true that she phoned NHS Pensions enquiring about possible changes that were to be made to NHS Pensions, as she was concerned about her future and wanted to make the best decision.
14. Further enquiries were made by this office of NHS Pensions to ascertain the nature of the calculations they had used to generate the statements, in particular why the value 1 had been used for hours worked and how it affected the total pensionable pay information displayed. NHS Pensions replied with new evidence about the information which they held. They said in their response:
  - For the purpose of the estimate, Mrs W's Full Time Equivalent (FTE) pensionable pay figure was calculated using NHS Pensions' internal TPP calculator. FTE hours are not used by this system. It calculated the pensionable pay figure by multiplying the actual figure (£2,257.89) by the number of calendar days in the period and dividing that result by the number of scaled days in the same period.
  - Unfortunately NHS Pensions agree that in this case it would have been more accurate to calculate the FTE pensionable pay using Mrs W's pensionable pay and hours from the previous Scheme year.
  - NHS Pensions' records show that on 10 May 2010 they contacted Thames Hospice Care by email to request the missing actual hours worked by Mrs W during the period 1 April 2000 to 31 March 2001. NHS Pensions believe that because a reply was not received by the due date the estimate was calculated on known information. The actual hours worked in the Scheme year ending 31 March 2001 were obtained by telephone on 16 June 2010, two days after the benefit quotation was completed and sent to Mrs W.
  - Regrettably upon further investigation a copy of the original annual update form (SD55) which was submitted to NHS Pensions by Thames Hospice Care in 2001 was on Mrs W's personal pension file. In addition to the pensionable pay and contributions the form includes the actual part time hours for the period from 1 April 2000 to 31 March 2001.
  - NHS Pensions can also confirm that when the information from this form was submitted a suspense file was created meaning NHS Pensions' records could

not be updated without further investigation. Unfortunately, the correct follow up action was not taken in this case and the form was not resubmitted.

- Had the file been properly investigated when NHS Pensions processed the estimate request they could have accurately calculated Mrs W's Scheme membership and FTE Pensionable Pay using the information from the SD55 form.
- Mrs W was provided with several incorrect estimates. Each time she was advised that if she had any queries about the membership or the pensionable pay detailed, she could contact her former employer or NHS Pensions.
- NHS Pensions appreciate that pension information can sometimes be complicated however the incorrect information in this instance was in regards to Mrs W's pensionable pay; not a complex calculation or technical point that required specialist knowledge and so it is considered that this should have been a matter which Mrs W could have identified, which in turn would have led to her receiving correct benefit quotations.

## Conclusions

15. It is an established legal principle that provision of an incorrect benefit statement does not entitle a Scheme member to a higher level of benefit than they are entitled to under the Scheme rules. I am satisfied that the final benefit provided to Mrs W is correct and do not find any basis on which she is entitled to the higher figure.
16. I have considered Mrs W's point that she was misled by the Scheme statements and the Scheme's representation that the error in her pensionable pay should have been obvious to her. I have also taken into account her claim that had she been given the correct information at age 55 she would have taken her pension then because there was no benefit in not taking it
17. I accept that Mrs W may not have understood exactly how 'total pensionable pay' was supposed to relate to her salary. However, I do not think her interpretation of the total pensionable pay figure as a 'pot' is as a result of anything said by the Scheme. Moreover, that interpretation is not compatible with the clear explanation of how the Scheme works which is given in the key notes. I bear in mind that the key notes provided with the estimates explained the accrual method under the Scheme. They also explained that for part time workers 'final pensionable pay' is full time equivalent pay. Less helpfully, they make no reference to the specific term 'total pensionable pay,' which is used on the face of the statement. Mrs W says she questioned the correctness of the statements generally but does not say that she questioned the total pensionable pay figure specifically. On balance, I consider that there was enough information in the key notes to tell Mrs W that there was a problem with the pensionable pay figure. It is also the case that the benefits available at 55 would have been subject to reduction for early payment and there is no evidence that not taking the pension until aged 60 caused financial loss.

18. Nevertheless, I am persuaded that there has been repeated maladministration by NHS Pensions causing Mrs W significant non-financial injustice. It is fundamental to the operation of NHS Pensions that its calculations are derived from the declarations of pensionable pay and hours worked made by employers. NHS Pensions' failure to process the information provided by Thames Hospice Care in 2001 was maladministration and the root cause of incorrect estimates being sent over a period of nine years. Even if the relevant information had been absent (which it was not), I can see no rational basis for choosing the value of 1 working hour to force the system to generate statements. That decision compounded the original maladministration of leaving the employer declaration in suspense, allowing the failure to process employer data to go unnoticed for far longer than it should have done. The problem was further compounded by NHS Pensions' failure to investigate the internal record properly before producing a retirement benefit estimate or when investigating the complaint. In my view the maladministration should have been obvious to NHS Pensions but it failed to discover or apologise for its processing failure through two stages of the IDRPs and when formulating its original submissions to the Ombudsman requiring the inconvenience of an extended investigation which could have been avoided.
19. I therefore uphold Mrs W's complaint and make a direction intended to remedy the non-financial injustice caused.

**Directions**

20. I direct that within 28 days of this determination NHS Pensions are to pay Mrs W £1,000 to reflect the significant distress and inconvenience caused to her by their repeated maladministration.

**Karen Johnston**  
Deputy Pensions Ombudsman  
18 November 2015