

Ombudsman's Determination

Applicant	Ms D
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Pensions (NHSP)

Outcome

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

Complaint summary

3. Ms D's complaint against NHSP is that she was incorrectly told that her Pension Credit Benefits (**PCBs**) were payable at the age of 52, and based on this she decided to retire early.
4. Ms D contends that it was only after she had retired that NHSP informed her that she had been incorrectly advised, and was only able to claim her PCBs in full from age 60, or on a reduced basis from age 55.

Background information, including submissions from the parties

5. Ms D was an active contributory member of the Scheme.
6. In June 2006 a Pension Sharing Order (**PSO**) was approved, providing Ms D with an additional pension and lump sum.
7. A PSO is one of a number of options available following a divorce or dissolution of a civil partnership and, if selected and approved, is issued by a court to set out how much an individual is entitled to receive from their ex-spouse/partner's pension. The additional pension and lump sum awarded are referred to as PCBs.
8. PCBs are usually paid at normal retirement age. This would be at age 60 for a member of the 1995 section of the Scheme, or age 65 for a member in the 2008 section. However, a member can apply for early payment of their PCBs, on a reduced basis, from their minimum pension age. The applicable minimum pension age is 50 if

the PSO was implemented before 6 April 2006, and from age 55 if the PSO was implemented after 6 April 2006, as was the case here.

9. On 29 June 2006, NHSP wrote to Ms D to confirm that the implementation of the PSO had been completed and provide her with an estimate of the cash equivalent value of the PCBs awarded to her. This letter stated that the PCBs were payable at age 60, and offered instructions on how and when to apply to receive them.
10. On 17 February 2013, Ms D asked NHSP to provide her with an estimate of her PCBs if she were to take early retirement on 3 December 2016 – her 55th birthday.
11. On 3 April 2013, NHSP responded to Ms D's request and supplied her with an up to date estimate of the value of her PCBs. This estimate advised in bold print that her PCBs were payable at age 60.
12. On 7 May 2013, Ms D again wrote to NHSP. She informed them that there was an error regarding her employment record, as a period of pensionable employment appeared to be missing. Ms D also requested confirmation regarding the date from which her PCBs could be paid.
13. On 3 July 2013, NHSP informed Ms D that their records had been amended to include the missing period of pensionable employment. NHSP also confirmed again that all benefits in respect of her PSO were payable at age 60.
14. On 17 April 2014, Ms D requested a revised estimate of the value of PCBs if she were to retire on 1 August that same year, aged 52.
15. On 22 April 2014, NHSP responded to Ms D's request and provided an estimate of the up to date value of her PCBs. Unfortunately, this estimate incorrectly advised Ms D that her PCBs could be payable at a reduced rate from 1 August, at age 52.
16. On 2 May 2014, Ms D telephoned NHSP to confirm that she could claim her PCBs at age 52. It was confirmed that she could, and that she would be required to complete and return the necessary forms in order to claim her PCBs.
17. Ms D states that she called NHSP again in July 2014, to reconfirm this advice was correct. NHSP have no record of this call.
18. On 29 July 2014, NHSP received Ms D's application for voluntary early retirement. She advised that she intended to retire on 5 September 2014.
19. On 5 September 2014, Ms D retired from her employment within the NHS.
20. On 17 September 2014, Ms D's pension award was processed but did not include her PCBs. Upon receipt of her pension award statement Ms D contacted NHSP to query the missing PCBs. NHSP informed Ms D that the information she had received on 22 April 2014, had been incorrect, and her PCBs were not payable until age 60. Alternatively they could be claimed from age 55 onwards on a reduced basis.

21. On 3 October 2014, Ms D wrote to NHSP to complain that her PCBs had not been put into payment as she believed they would be.
22. On 30 October 2014, NHSP responded to Ms D's complaint. They summarised the content of her email and briefly listed the chronology as an outline to their investigations. This letter accepted that NHSP had provided conflicting information to Ms D, but confirmed that according to the Scheme Rules, her PCBs were only payable at age 60 (or at age 55 on a reduced basis).
23. On 3 April 2015, Ms D complained to NHSP under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She argued that she had taken the decision to retire based on incorrect information provided by NHSP, and therefore, the decision not to award her the PCBs should be reconsidered and these benefits made available to her immediately.
24. On 4 June 2015, NHSP wrote to Ms D with their Stage 1 IDRP response. NHSP stated that, whilst it was unfortunate that the incorrect information had been provided, the Scheme Rules regarding PCBs had been correctly applied in Ms D's case and they were unable to put her PCBs into payment before the age of 55. NHSP did not uphold Ms D's complaint.
25. On 8 September 2015, Ms D wrote to NHSP with her Stage 2 IDRP appeal.
26. On 7 October 2015, NHSP wrote to Ms D with their Stage 2 IDRP response. In this letter, NHSP stated that the Scheme Rules were clear in that Ms D could not receive her PCBs before she reached age 55 and could not receive these benefits on an unreduced basis until age 60.
27. NHSP said that Ms D had suffered a loss of expectation, in that she was incorrectly advised that her PCBs could be paid from age 52, when this was in fact never the case. NHSP also said that, as Ms D had secured new employment, her income had likely not been reduced significantly.
28. NHSP again acknowledged their error in providing Ms D with incorrect information, and that this had caused her distress and inconvenience. Ms D was offered £250 in compensation.
29. Ms D did not accept the compensation offered and subsequently complained to this service.

Adjudicator's Opinion

30. Ms D's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSP. The Adjudicator's findings are summarised briefly below:

- Ms D was supplied with information correctly advising her that her PCBs were only payable from age 60 on a number occasions over a period of years. The last statement received by Ms D in 2014, incorrectly advised that her PCBs could be payable from age 52 on a reduced basis.
 - Although, it is not disputed by NHSP that Ms D telephoned to confirm she was able to take PCBs early, it was not reasonable to disregard all previous statements advising PCBs were payable from age 60 based upon this.
 - Whilst it is accepted that maladministration occurred on the part of NHSP, the Scheme Rules state that PCBs are payable from age 60 (or at age 55 on a reduced basis). NHSP has no discretion in this matter and the provision of incorrect information confers no right to the incorrect amount. In this case the Scheme Rules have been correctly applied as Ms D has no entitlement to payment of her PCBs at age 52.
 - It is clear that the provision of incorrect information from NHSP amounts to maladministration. However, Ms D has not suffered a direct financial loss, but rather a loss of expectation. It has been accepted by NHSP that this will have nonetheless caused some distress and inconvenience to Ms D, and they have offered a payment of £250 as compensation.
 - Awards for distress and inconvenience are usually quite modest and it was not considered, on balance, that the circumstances of Ms D's complaint warranted an increased award.
31. Ms D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms D provided her further comments many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Ms D for completeness.

Ombudsman's decision

32. It is clear from the papers that NHSP incorrectly advised Ms D that she would be able to take her PCBs, on a reduced basis, at age 52 and I am satisfied that this amounts to maladministration on the part of NHSP.
33. However, as was set out in the Opinion, the legal principle applicable in such cases is that the receipt of incorrect information about benefits confers no right to the (usually higher) incorrect benefits. As I am sure Ms D will appreciate, NHSP are obliged to administer the Scheme in accordance with the Scheme Rules, they have no discretion in this regard, and these are clear in that Ms D can only claim her PCBs on an unreduced basis from the age of 60 and on a reduced basis from age 55. There are no circumstances in which she is entitled to claim her PCBs at age 52.

34. Given these facts, I am satisfied that NHSP have correctly applied the requirements of the Scheme Rules and have calculated Ms D's PCB entitlement correctly.
35. I turn next to the question of whether the circumstances of Ms D's complaint are such that they warrant an increased compensation payment. In this respect, I think it might be useful explain again that compensation payments for non-financial injustice, that is distress and inconvenience, are usually quite modest. In cases where I do not consider that the injustice caused is significant, I would not direct that an award be made.
36. In this case, I am aware that NHSP provided Ms D with the correct information regarding her PCBs at the time her PSO was confirmed in 2006 and in all subsequent communications from them on this subject. It was only in April 2014, when Ms D asked for an estimate of her PCBs were she to retire at age 52, that she was provided with information that contradicted the information previously provided.
37. It is indeed unfortunate that NHSP failed to advise Ms D until after she had retired that she could not claim her PCBs at age 52 and I accept that this must have added to her sense of disappointment over this matter.
38. Having taken into account all the available evidence, I do not consider that the non-financial injustice suffered by Ms D was significant and I do not consider, therefore, that an increased compensation payment is warranted in this case.
39. Therefore, I do not uphold Ms D's complaint.

Anthony Arter
Pensions Ombudsman

19 July 2016