

Ombudsman's Determination

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| Applicant | Mrs R |
| Scheme | NHS Pension Scheme (the Scheme) |
| Respondents | Equiniti Paymaster (Equiniti) NHS Business Services Authority (NHS BSA) |

Outcome

1. Mrs R's complaint against Equiniti and NHS BSA 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), NHS BSA shall pay Mrs R compensation of £500 for the significant distress and inconvenience caused by their error.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R's complaint is that NHS BSA is requesting the repayment of a pension that was overpaid to her.

Background information, including submissions from the parties

4. Mrs R worked as a clinician for the National Health Service (**NHS**).
5. In January 2014, Mrs R completed an AW8 form in order to take her retirement benefits.
6. In response to this, on 27 January 2014, NHS BSA sent Mrs R an 'Estimate of Benefits' letter. The letter contained information on the maximum lump sum Mrs R would be entitled to, an amount of £78,090.32. Within the letter, it said that the statement was an, "estimated quotation only" and that, "exact figures for retirement benefits cannot be given until such time as final pay and service details are known..."
7. In April 2014, Mrs R received a more detailed benefit statement. This said that the net lump sum due to Mrs R on 1 May 2014 was for the amount of £124,902. This amount consisted of a lump sum of £44,836 and a commuted lump sum of £80,065.
8. Following receipt of this statement, Mrs R contacted NHS to query whether the amounts quoted in the April 2014 statement were correct.

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9. On 30 April 2014, Mrs R retired from NHS employment.
10. NHS considered Mrs R's query and responded to her in a letter dated 2 May 2014. It said:-

“Thank you for your recent enquiry regarding your NHS Pension Scheme retirement benefits.

When producing your estimate, you had protected pay but due to the deemed date pensions increases were not due until after the commencement of the next financial year. (Factors were not available).

Therefore we have used the final total pensionable pay on the AW8 submitted for the estimate. This would mean the benefits shown on the estimate are likely to be slightly under-estimated, but it wasn't possible at the time to produce an accurate split pay calculation.

I trust the above to be in order.”

11. Mrs R says this letter led her to believe that her query had been resolved. Mrs R was paid a retirement lump sum of £124,902; she says she believed that the amounts paid were what she was entitled to.
12. Mrs R says that based on the assurances she was given, she made respective payments of £5,000, £2,000 and £6,000 to her children. These payments were made towards her son's first home and her daughter's wedding.
13. In June 2014, following the receipt of final revised pensionable pay information from Mrs R's former employer, NHS BSA reviewed the pension that was paid to Mrs R.
14. On 18 June 2014, NHS BSA sent Mrs R a letter regarding the revised benefits, which were payable. This stated a slightly lower annual pension and said that Mrs R's lump sum retiring allowance was £78,090.
15. Mrs R has said that she did not receive this letter. Mrs R continued to make further payments to her children from the lump sum until January 2015. These further payments totalled £19,500.
16. In January 2015, NHS BSA was considering pension increase amendments. At this point, NHS BSA realised that it had overpaid Mrs R.
17. In January and February 2015, NHS BSA sent letters to Mrs R, asking her to return the amount which had been overpaid. NHS BSA said that Mrs R should only have received a lump sum of £80,026, but instead she received £124,902. Therefore, NHS BSA had overpaid Mrs R by £44,875.
18. On 21 February 2015, Mrs R complained under stage one of NHS BSA's Internal Dispute Resolution Procedure (**IDRP**). She said that because of the lump sum, she made financial decisions which she would not have if she had been awarded the lower lump sum. Specifically, she said that had she received the expected lower lump

sum, she would not have been in a position to gift money to her children. As the money had already been gifted, she said £32,500 of the £44,875 overpayment was not recoverable.

19. In NHS BSA's stage one response, it did acknowledge that there were errors in the way that Mrs R's award was calculated and that she was provided with incorrect information. NHS BSA accepts that it should not have cited the incorrect £80,065 additional lump sum figure as this should have been valued at approximately £35,000. It also explained the doctrine of 'change of position' and said that it could not determine whether this defence would be successful. NHS BSA concluded that it would require repayment of the overpaid sum.
20. Mrs R appealed this decision under IDRP stage two. She said that in view of her intention to preserve her lump sum for as long as possible, she would not have gifted a significant proportion of it had she known her correct entitlement. She reiterated that £32,500 of the £44,875 overpayment was not recoverable, but said she could repay the remaining £12,375 which she had not spent.
21. NHS BSA did not uphold the complaint, highlighting that there had been a loss to public funds. However, in recognition of the incorrect information provided by NHS BSA, it offered compensation of £150 for distress and inconvenience, in full and final settlement of the complaint.
22. Mrs R did not agree with the outcome reached by NHS BSA. She brought the matter to this Office.
23. In its formal response to this Office, as well as reiterating the points above, NHS BSA made the following comments:-
 - The 2 May 2014 letter said that previous estimates had been "slightly underestimated". As the amount Mrs R received was almost 60% more than her last estimate, she should have realised that the amounts paid to her were not correct.
 - In the five years leading up to retirement, NHS BSA sent her statements that stated the correct pension amounts including the lump sum entitlements.
 - Mrs R should have realised that, when taking a maximum lump sum, she had to sacrifice £1 of pension for an additional £12 lump sum payment. Based on this principle, Mrs R should have realised that she would receive an additional lump sum of approximately, £35,000, and not the £80,000 she was overpaid.
 - NHS BSA would increase its previous offer of compensation for distress and inconvenience to £500.

Adjudicator's Opinion

24. Mrs R's complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA. The Adjudicator's findings are summarised briefly below:-
- It was reasonable for Mrs R to rely on the information provided by NHS BSA in its statement of April 2014 as an accurate representation of her pension entitlement, on the basis that upon querying it, she was provided assurances, specifically in its letter of 2 May 2014, as to its accuracy.
 - Furthermore, Mrs R waited until she received the 2 May 2014 letter before gifting money to her children from the lump sum, which was appropriate in the circumstances.
 - Although Mrs R says she did not receive the June 2014 letter on her revised benefits, this was correctly addressed and it was more than likely that NHS BSA posted this letter. Hence, there was no identifiable reason why Mrs R would not have received it.
 - Mrs R contends that she would not have gifted the money had she been aware of her correct entitlement. In considering that Mrs R made payments to her children in order to pay towards a home deposit and a wedding, it is likely that Mrs R would have incurred this expenditure irrespective of the overpayment. On this basis, Mrs R's change of position claim could not be successful.
 - NHS BSA should be able to recover the overpayment and the Adjudicator agreed with the level of compensation put forward by NHS BSA, a payment of £500, for its failure to recover the overpaid funds in June 2014.
 - The adjudicator did not find that a further compensation payment ought to be paid by Equiniti. She said that whilst Equiniti failed to rectify the error when it received the correct information from NHS BSA in June 2014, this was not a significantly serious error to warrant separate compensation.
25. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments 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 Mrs R for completeness.

Ombudsman's decision

26. Mrs R has said that although the adjudicator's Opinion was that it was more than likely that NHS BSA posted the June 2014 letter, there is no proof of dispatch, delivery or record of the originating administrator. Mrs R has also emphasised that this letter was not mentioned by NHS BSA in correspondence to her until the matter was brought to this Office, which she believes casts doubt on whether it was sent.

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27. I agree that it cannot be said with certainty that this letter was dispatched by NHS BSA. However, this case does not turn on the matter of whether NHS BSA appropriately dispatched this letter. Even if it is found that Mrs R spent these sums in good faith, it would need to be demonstrated that but for the overpayment, Mrs R would not have gifted the sums of money in question to her children.
28. On this point, Mrs R has said she strongly refutes that she would have incurred this expenditure in any event. Mrs R says that when considering her correct entitlement, although she believes any parent in a close relationship with their children would wish to gift money in those circumstances, she was not in a financial position to do so. She has also said that she made no financial contribution towards her son's marriage, which had taken place a few years earlier.
29. I have taken these points into account but I am not persuaded that Mrs R would not have made the same financial decisions had she not received the overpayment. Consequently, in my view I do not find that Mrs R has sufficiently demonstrated a change of position.
30. I do not uphold the part of Mrs R's complaint which concerns the recovery of overpaid funds. NHS BSA should however compensate Mrs R for the distress and inconvenience she has suffered.

Directions

31. Within 21 days of this determination, NHS BSA shall pay £500 for the significant non-financial injustice caused to Ms R as a result of its failure to take appropriate steps to act on the overpayment once it was realised in June 2014.

Anthony Arter

Pensions Ombudsman
22 March 2017