Ombudsman’s Determination

Applicant          Mrs Valerie Haine
Scheme             NHS Pension Scheme (the Scheme)
Respondent         Kent and Medway NHS and Social Care Partnership Trust (the Trust)

Complaint summary
Mrs Haine has complained that as a result of the Trust providing NHS Pensions with incorrect information her pension benefits have been overpaid.

Summary of the Ombudsman's determination and reasons
The complaint is not upheld. Whilst the Trust's provision of incorrect information to NHS Pensions amounts to maladministration, there is no financial loss and the Trust's offer of compensation is sufficient.
Detailed Determination

Material Facts

1. Mrs Haine started work for the Trust as a Nursing Assistant in 1998, initially working 30 hours a week.

2. After a period of illness, her employment in that post ceased and following a trial period she was appointed as a part-time Receptionist (Administration and Clerical Grade 2) from 10 March 2003. The contract was initially for 17 hours per week (paid at Pay Band 2). On a “Staff Change/Termination Form” a hand-written note in the “Other changes/remarks” section said:

“PROTECTION – look up Whitley Rules A & C. This change is for illness. She is entitled to mark time on her existing salary of pro rata £11,455 until the maximum of A & C2 equates or exceeds this amount (17 hours only)”

3. The offer letter from the Trust to Mrs Haine stated amongst other things:

“This post is for 17 hours per week. As this is a drop in your previous contracted hours (30) you have written to confirm that this is what you want. You will also cover your colleague during periods of annual leave and sickness as agreed with your manager.

Under the Administrative and Clerical Whitley Council, since your transfer is for reasons of illness or injury, you will be entitled to mark time on your existing salary of pro rata to £11,455 as a personal salary until such a time as the maximum of the Administrative and Clerical Grade 2 equates to or exceeds this amount.”

4. The Trust have explained that the effect of this is that Mrs Haine should have been paid for her contracted hours based on her hourly rate of pay for her nursery assistant post; but only until her salary reached the top of Pay Band 2.

5. However, Mrs Haine continued to be paid based on 30 hours per week at the nursery assistant level. Contributions were deducted from her pay at the incorrect level and the Trust based its own contributions on the same pay.

6. Mrs Haine retired from the Trust on 31 March. Her pension and lump sum were calculated using a whole time equivalent pensionable pay of £23,620.26, which the Trust had advised to NHS Pensions based on what she was actually being paid.

7. On 6 April Mrs Haine was informed by the Trust that her pension had been overpaid. Later that month the Trust advised NHS Pensions that Mrs Haine’s correct whole time equivalent pensionable pay was £16,333.
8. On 30 June NHS Pensions notified Mrs Haine of her amended entitlement. The net result was an overpayment of £4,473.75.

9. Mrs Haine refused an offer of £350 compensation from the Trust in January 2011. She argued that she was entitled to a pension based on her pension contributions (not her hours worked). Mrs Haine subsequently exchanged correspondence with the Trust on this issue and the Trust eventually accepted evidence that she had worked more than her contractual hours. The Trust therefore updated her records with NHS Pensions on this basis.

10. Following receipt of Mrs Haine’s revised Scheme membership from the Trust, NHS Pensions informed her on 22 April 2013 that her benefits had been revised from 1 April 2010. This created arrears of £2,996.52. Mrs Haine was asked if this amount could be offset against the original overpayment (to reduce it from £4,473.75 to £1,477.23) but she refused.

Summary of Mrs Haine’s position

11. Mrs Haine says:
   - there has been mistake after mistake by the Trust and she is the victim of these mistakes;
   - she was never notified at any point when she was offered the Receptionist position that it would affect her pension; she was told that she would be paid for 30 hours and that the terms and conditions of her employment would remain the same;
   - she feels she has been grossly misled because she paid into a scheme that she had been told by the Trust would benefit her when she retired;
   - she has suffered extreme stress and anxiety since retiring and continues to feel let down and disappointed with the Trust to date;
   - she has suffered financial loss through the Trust’s negligence and incompetence;
   - she is only prepared to accept a pension based on the contributions that she paid.

Summary of the Trust’s position

12. The Trust acknowledge that they gave Mrs Haine assurances that she would not be prejudiced by her new job and that her pension would not be adversely affected and that a number of errors occurred in relation to her change of role.
13. The Trust say:

- they overpaid £26,663.04 in employer pension contributions and pay to Mrs Haine (based on 30 hours a week rather than her contractual hours), which they have agreed to write off;
- they concede they provided NHS Pensions with an inflated whole time equivalent pensionable pay for Mrs Haine,
- NHS Pensions gave Mrs Haine the opportunity to reduce the overpayment by the pension arrears but she chose not to do so;
- they have done all they can to address Mrs Haine’s pension position;
- they are not responsible for any stress or anxiety caused to Mrs Haine resulting from her failure to progress with the repayment of the overpayment with NHS Pensions;
- their offer of £350 remains open for acceptance by Mrs Haine until 6 April 2015;
- it would not be just and equitable for them to have to pay any further compensation to Mrs Haine.

Conclusions

14. Mrs Haine’s salary was overpaid. The pension overpayment occurred as a result of the Trust providing NHS Pensions with an incorrect whole time equivalent pensionable pay for Mrs Haine. It was not the result of their initial failure to take account of the number of hours she worked, namely 30 hours per week.

15. Mrs Haine says, in effect, that her pay was not incorrect. That is strictly an employment matter between her and the Trust. They say that it was incorrect but that they have not asked her to pay it back. I find, however, that the Trust has now notified NHS Pensions of a proper pay figure based on the right rate of pay and hours worked.

16. Mrs Haine wants to receive a pension based on the pay she actually received. But she is strictly only entitled to pension based on her “salary wages and fees” that relate to her employment. The difference between what she was due and what she has received is, in effect, a gratuity (that is, she has been given it, rather than has earned it). So it is not pensionable. She has been receiving her correct entitlement (as set out in NHS Pensions’ letter of 22 April 2013). She has therefore been put in the position she would have been in but for the Trust’s error.
17. Mrs Haine has not suffered financial loss as a result of the Trust's maladministration. She has however been caused distress and inconvenience. In all the circumstances, I consider that the Trust's offer of £350 compensation is quite generous in view of their decision not to pursue a very considerable overpayment of salary.

18. I therefore do not uphold her complaint.

Tony King
Pensions Ombudsman
20 March 2015