

Ombudsman's Determination

Applicant	The Estate of the late Mr R (the Estate)
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. This complaint is partly upheld. To put matters right, NHS BSA shall pay the Estate £2,000 in recognition of the severe distress and inconvenience caused.

Complaint summary

2. Mrs Y, on behalf of the Estate, has complained that:-
 - She was unable to acquire sufficient information from NHS BSA to enable her to complete form AW8P. She believes NHS BSA was obstructive and at various points refused to give information to her. (**Complaint 1**)
 - She believes NHS BSA delayed giving information to her about the benefits to which her late husband, Mr R was entitled. (**Complaint 2**)
 - The letter dated 7 September 2016 (**the September estimate**), enclosing Mr R's benefit statement, erroneously overstated his period of service, so the estimate of his benefits, including survivor's benefits payable to her, was wrong. (**Complaint 3**)
 - Mrs Y's complaint, as a beneficiary, is that she is not confident that she is in receipt of the correct survivor's benefits. (**Complaint 4**)

Background information, including submissions from the parties

3. Mr R was a deferred member of the 1995 Scheme, having left his NHS employment on 28 February 2007.
4. On 21 June 2016, Mrs Y telephoned NHS BSA to ask for ill health options as Mr R was terminally ill with less than 12 months of life expectancy. NHS BSA subsequently emailed Mrs Y with links to the relevant forms AW8P and AW240. It also advised her

she needed to complete a letter of authority (**LOA**) with the forms to proceed with an application for an ill health pension.

5. On 23 June 2016, Mr R completed the LOA authorising Mrs Y to “speak on [his] behalf and have access to all [his] pension information.” He also completed form AW240 regarding application for early payment of deferred benefits (**EPDB**) on the grounds of ill health. Mr R’s treating hospice doctor said in the AW240 form that he was terminally ill with “prognosis estimated at short weeks.”
6. On 4 July 2016, NHS BSA received the AW240 form and LOA. On 5 July 2016, the Scheme’s Medical Adviser, OH Assist, sent a letter to Mr R informing him his application for an EPDB was successful. The letter enclosed an application form AW8P, which NHS BSA said was necessary to complete and sign before the benefits became payable and also a booklet known as the Retirement Guide.
7. Page 13 of The Retirement Guide, under section “1995 Scheme”, said:

“You may also have the option to take early payment of benefits on the grounds of serious ill health converted into a one off payment.”
8. Page 30 of the Retirement Guide under section “1995 Scheme” said:

“Lump sum on death

The lesser of:

5 x annual pension less amount of pension already paid; or

2 x actual pensionable pay (from the year that was used to calculate benefits when you retired) less the total retirement lump sum already taken.”
9. On 3 August 2016, Mrs Y telephoned NHS BSA asking how to complete the AW8P form. NHS BSA advised her that she would need to sign the form and the funds would need to go into a bank account in Mr R’s name. On 9 August 2016, Mrs Y telephoned NHS BSA enquiring which type of scheme Mr R was in and was told the 1995 Scheme.
10. In August 2016, Mrs Y approached an independent financial adviser (**IFA**) for assistance with the application. On 12 August 2016, the IFA contacted NHS BSA to request an estimate of Mr R’s pension benefits.
11. On 20 August 2016, Mr R died.
12. On 7 September 2016, Mrs Y received an estimate of Mr R’s pension benefits (**the September estimate**). It overstated the length of Mr R’s pensionable service and, as a result, quoted incorrect pension figures.
13. On 13 September 2016, Mrs Y telephoned NHS BSA to notify it of Mr R’s death.

14. On 12 October 2016, NHS BSA sent Mrs Y revised pension figures which were based on Mr R's correct pensionable service of 19 years 89 days and pensionable pay of £73,246.33.

15. On 17 October 2016, Mrs Y emailed NHS BSA and said she had received the September estimate and she questioned its pension figures. She said:

"In that letter the figures for the Survivor's Pension are quoted as £21,769.50 p a, which is about 50% of the pension value of £43,539.16. I rang when completing the forms to confirm which benefit I will qualify for and this was stated to be correct along with x3 pension lump sum. I took that to mean (and no-one told be [sic] otherwise), [Mr R's] pension of £43,539.16 but the lump sum I have received seems to be x3 the Survivor's Pension.

I am totally confused. I rang you on a number of occasions in an effort to decide what my best course of action was and in an effort to understand all of this. I'm sure you understand, the unexpected uncertainty for my future added to my distress significantly. The only clarification I managed to secure in all that time was, eventually, a written confirmation of the current value of benefits which now doesn't seem to bear any relation to what I've been notified will be paid."

16. On 17 November 2016, NHS BSA wrote to Mrs Y addressing her concerns and said in summary:-

- Unfortunately, the pension figures sent in the September estimate were incorrect. There was an error on Mr R's pension record at the time the estimate was calculated.
- The computer system used Scheme membership of 37 years 209 days in its calculations instead of the 19 years 89 days that Mr R had actually accrued up to his last day in the Scheme on 28 February 2007. This error had now been corrected.
- It confirmed that the pension figures sent to her on 12 October 2016, were correct.
- It apologised for any distress and inconvenience this error may have caused her.

17. On 29 November 2016, Mrs Y wrote to NHS BSA expressing her dissatisfaction. She said in summary:-

- She was distressed at the treatment she had received from NHS BSA during this most difficult time of her life.
- Over the last few months, she had tried very hard to establish what pension she should receive but she found the NHS helpline "impossible."
- She had very little time to resolve all the issues around Mr R's death, not just pension issues. She managed to obtain the LOA from Mr R and submitted it to

NHS BSA but nobody was prepared to give further information to her. She could not “emphasise enough how distressing that was.”

- The helpline’s lack of willingness to provide factual information was appalling, unnecessary and cruel. As a result, she had to seek independent advice.
- She had approached Pension Wise, which was shocked by NHS BSA’s treatment of her and which urged her to complain.
- It was a mystery why the IFA managed to gain access to pension figures while she was denied it. The pension figures arrived too late as Mr R had already died but she was relieved to see her survivor’s pension was £22,000 per annum. She then found out this figure was not correct.
- She wished NHS BSA had checked the pension figures thoroughly and verified them. Now, she was wondering if the figures were correct especially in light of the errors made so far.

18. On 3 January 2017, NHS BSA wrote to Mrs Y and said in summary:-

- It had taken time to listen to her telephone calls to its helpline regarding her request for information on how to apply for Mr R’s benefits. It noted that the call handler had told Mrs Y on 21 June 2016 that she would be eligible to claim his benefits on the grounds of ill health and that they would email her the link to the NHS website to get the claim form and supporting guidance.
- The call handler requested that a signed LOA was sent in together with the application form.
- It received form AW240 on 4 July 2016 and an LOA to enable her to discuss Mr R’s pension.
- It was disappointing that during a couple of her telephone calls she was advised that an LOA was still required, yet this information was not checked beforehand. For this, it apologised.
- It expected its call handlers to treat all callers with respect and courtesy and provide correct information. It treated any failure to deliver the service expected by its members very seriously and it was always disappointing when there was cause for complaint.
- Mr R’s application was successful and a letter was sent to confirm this on 12 July 2016. But form AW8P was still required to claim his benefits. As Mrs Y was unsure of any amounts that Mr R was entitled to and to assist her in choosing which option to tick on the form, it noted that she and her IFA had telephoned to request an estimate on 12 August 2016.

- When the estimate was processed this was done through its automated system and the total service was calculated incorrectly. It offered its sincere apologies for the error and any distress and inconvenience this may have caused her.
 - It wanted to assure Mrs Y that the error had now been corrected and the benefits estimate of 12 October 2016 was correct.
19. On 9 March 2017, Mrs Y wrote to NHS BSA raising the complaint under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). A summary of what she said is detailed below in paragraphs 20 to 34.
 20. Although NHS BSA's letter of 3 January 2017 offered some explanation it did not address the problems she encountered or comment why she was not able to access the information she urgently needed in order to submit her claim.
 21. She initially raised her enquiries with the call handler but as they could not answer her queries she was asked to send an email which she did on 17 October 2016. It took 23 working days for NHS BSA to reply to her.
 22. Mr R became unwell on holiday and found out a few days after his return that his illness was terminal. He was concerned for her future and naturally wanted to make sure she would be okay.
 23. The call handler was initially very helpful when they told her to download the form. And she was advised once she submitted the forms, she should call NHS BSA to make sure her case was being fast tracked.
 24. She was reassured that the process was straightforward. Completing the forms and organising the doctor to provide medical opinion was very difficult for her.
 25. She was baffled when she received a letter asking her to complete yet another form AW8P together with the Retirement Guide. This was not explained by the call handler and she felt like she was starting all over again.
 26. She had tried to read and understand the Retirement Guide and realised she had no chance of understanding the variants outlined in the 1995 Scheme without clarification.
 27. She needed to understand whether in her circumstances she should submit Mr R's application straight away and, if so, if they chose to have a lump sum whether it would have to be reimbursed after he passed away. She did not understand whether this would affect her survivor's pension.
 28. She showed the Retirement Guide to a few friends who were also as unclear as she was, and she finally found time to call the helpline to clarify. The call handler was unable to answer her questions and subsequent handlers would not accept she had authorisation to access Mr R's pension. So, she was unable to proceed.

29. All attempts to get clarification, explanation and information failed. She also received contradictory information and was told that there was no such thing as fast tracked applications so theirs would be treated in the same time frame as everyone else's.
30. She did not know if Mr R had set up an online account where she could access his annual benefit statements and she could not find any reference to it on his computer.
31. NHS BSA wanted to charge her £200 for obtaining pension figures which took weeks to arrive. Although the fee was waived, she had to wait too long for the information to arrive.
32. NHS BSA blamed the error on the computer, but nobody had checked the figures before sending such important information out. This was very distressing for her.
33. In the correspondence from NHS BSA, dated 5 July 2016, it told her she should have received a booklet called 'Notes for Pensioners and their Dependants'. This was not enclosed; rather, what she received was the Retirement Guide, which was why it was so difficult for her to understand how to complete the form.
34. She still did not understand what the full implications of either course of action would have been but it seemed she had lost out financially by not being able to get the information she needed.
35. On 9 May 2017, NHS BSA sent Mrs Y its stage one IDRP decision, a summary of which is set out in paragraphs 36 to 49 below.
36. It was sorry Mrs Y felt let down at this very difficult time.
37. It wrote to Mr R on 27 February 2010 to explain what had happened to his NHS pension and that benefits would be payable in the event of his death.
38. After it received form AW240 on 4 July 2016, in view of Mr R's poor health, the application was fast tracked. On 5 July 2016, its medical advisor (**MA**) confirmed that Mr R was eligible to take his benefits early. The MA also confirmed that Mr R could apply to have benefits commuted as a single lump sum.
39. It noted two telephone calls she made on 3 and 9 August 2016 to get advice regarding completing form AW8P which was provided to her.
40. On 12 August 2016, the IFA requested the estimate of an ill health pension. NHS BSA's timescales for producing the estimate was 40 working days. The estimate was issued on 7 September 2016. This was within its target time but regrettably the figures quoted were incorrect.
41. As Mr R did not submit the AW8P claim form before his death, it was unable to pay him an ill health pension and lump sum.
42. It had calculated her survivor's benefits correctly and confirmed them to her on 12 October 2016.

43. Its policy was to encourage members to utilise the Total Reward Statement (**TRS**) facility wherever possible. Most members were able to access their annual statements via the TRS portal. The statements provide all the information that would be included in an estimate and was a faster and more convenient way of obtaining pension information.
44. In view of the convenience of the TRS portal, in accordance with the Government's Digital Initiative it had taken the decision that, as of 13 July 2016, it would only produce age related estimates free of charge if the member did not have a statement available and had not received an age related estimate in the last 12 months.
45. When a member died with deferred benefits, a lump sum death benefit equal to three times their pension would be payable to their estate. A survivor pension equal to half the member's deferred pension would be payable to their widow.
46. If a deceased member had been in receipt of pension for less than five years, a lump sum death gratuity may be payable. As page 30 of the Retirement Guide explained, this was the lesser of five times annual pension less the pension that had already been paid or twice final annual pay less any retirement lump sum paid.
47. Telephone recordings were only kept for six months and call handlers will usually make a brief note of the contents of the call on the member's record.
48. The call handler was able to provide general information about survivor's pension but was unable to account for the difference between the figures. This information was provided to her on 17 November 2016 apologising for the error.
49. It had already upheld her complaint on the grounds that the estimate of 7 September 2016 was overstated. It had also already apologised that on a couple of occasions its call handler overlooked the LOA that Mr R had provided for her to discuss his pension.
50. On 31 July 2017, Mrs Y appealed further under stage two of the IDR. In her submission, she said in summary:-
 - The stage one decision contained incorrect details and an omission of the number of calls made, their purpose and content.
 - It did not explain why her LOA was not acted upon.
 - No links to the NHS website or any other information were emailed to her and she had to find the information by herself.
 - She had been sent the Retirement Guide, rather than the Notes for Pensioners and their Dependants guide.
 - During the call of 3 August 2016, the handler refused to accept that an LOA was held by NHS BSA, and refused to provide the details requested by Mrs Y. This added to her distress.

- NHS BSA did not address the consequences of the handler's failure to notice that the LOA was already in NHS BSA's possession. The consequence was that Mr R's formal claim for pension benefits was delayed.
- Her complaint had not been resolved satisfactorily. She should have been provided with the information she needed in order to put Mr R's pension into payment. She had done everything which could be reasonably expected in order to do so.

51. On 7 September 2017, NHS BSA sent Mrs Y its stage two IDR decision that did not uphold her complaint. It said in summary:-

- Unfortunately, it was unable to access any telephone recordings as the six month period had now passed which meant that it was only able to access the call handler's notes.
- The notes of the call showed that an email was sent to Mrs Y's correct email address providing a link to forms AW8P and AW240.
- The letter of 5 July 2016 detailed that there was a letter from Mr R dated 23 June 2016 giving Mrs Y authority to act on his behalf. But no details were present to confirm her authority to complete his application form.
- In the telephone call of 3 August 2017, she was advised that Mr R would need to sign his retirement application form and that any funds would need to be paid into a bank account in his name.
- The LOA gave authority for it to speak with her regarding Mr R's pension and give access to all his pension information. However, only in circumstances where a person held a Lasting Power of Attorney would it accept an application form completed by a person other than the member.
- It acknowledged that Mrs Y felt that she had not been treated to the standard detailed in its Member Charter and it wanted her to accept its apologies for this. However, it could not see from the call notes on Mr R's record that she received incorrect or misleading information.
- The only means by which Mr R's benefits could have been put into payment would have been if he had claimed them himself or she had a Lasting Power of Attorney authorising her to deal with his affairs.

52. NHS BSA further submits:-

- It has found no evidence that it had been obstructive and unhelpful upon Mrs Y telephoning its helpline.
- Regarding the September estimate, it did not know at that time that Mr R had passed away on 20 August 2016.

- It acknowledges that the figures should have been checked before their release and it has apologised to Mrs Y for any distress and inconvenience caused by providing the incorrect figures in the September estimate.
- Part 3.1 of the AW8P form and the guidance state that if a commuted EPDB is being claimed on the grounds of serious ill health, then form AW341 is also required to be completed and returned with the AW8P form.
- As Mr R did not complete the required form before his death, the benefits could not be paid.
- Following his death, an application form AW9P was sent to Mrs Y in order to claim payment of a dependant's pension. The pension Mrs Y was entitled to was less than the figures quoted in the September estimate.
- However, Mrs Y's benefits have been paid in accordance with the 1995 Scheme Regulations relating to the survivor's benefits payable in respect of a deferred member.
- Mrs Y referred to Notes for Pensioners and their Dependents being a separate document to the Retirement Guide. However, this name was a previous title for the Retirement Guide.

Adjudicator's Opinion

53. The complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA. The Adjudicator's findings are summarised below in paragraphs 54 to 76.

Complaint 1

54. Mr R signed an LOA on 23 June 2016 authorising Mrs Y to speak on his behalf and have access to all pension information. It was not in dispute that this was provided to NHS BSA alongside the completed application form AW240 for Mr R to be considered for an EPDB on the grounds of terminal illness.
55. NHS BSA subsequently received the form AW240 and LOA on 4 July 2016 and on 5 July 2016 a decision letter was sent to Mr R accepting his application for an EPDB. However, in order for Mr R to claim his benefits, he was required to complete a form AW8P. The Adjudicator noted that the IDRP stage one decision said that Mr R could apply for a commuted one off lump sum but the letter of 5 July 2016 did not say that. However, the Adjudicator was satisfied that the information regarding lump sum options, and how it would be payable, was provided in the Retirement Guide sent to Mrs Y.
56. The Adjudicator noted that Mrs Y said that a form AW341, which needed to be completed to apply for a one off lump sum, was not sent to her with the above letter. There was also no benefit statement setting out the value of Mr R's accrued benefits

within the Scheme. Given the circumstances of the case, the Adjudicator would expect NHS BSA to have provided this information in the letter of 5 July 2016.

57. Mrs Y found the form difficult to understand. She was able to complete some sections and the form was signed by Mr R and witnessed. But she was unable to complete other sections. In Part 3 of the partially completed AW8P form, there was an option to tick "Early payment of deferred benefits on ill health grounds" and "commuted early payment of pension benefits based on ill health grounds (attach form AW341)".
58. Mrs Y sought information from NHS BSA by telephone on a number of occasions. The exact number of calls was not clear, but it did not seem to be in dispute that Mrs Y made calls on the 3 and 9 August 2016. In the pre-IDRP response letter from NHS BSA dated 3 January 2017, it acknowledged that it was "disappointing to see that during a couple of your telephone calls to the member helpline you were advised that a letter of authority was required to discuss [Mr R's] case yet this information was not checked beforehand and for this I apologise."
59. Although the later IDRP stage two response sought to rescind this statement to some extent, the statement made in the 3 January 2017 letter was made with the benefit of the decision maker having heard the recorded calls. So, the Adjudicator was more persuaded to accept this evidence that, on at least two occasions, the helpline refused to discuss the details of Mr R's pension benefits.
60. Consequently, her view was that Complaint 1 should be upheld as there were identifiable failings by NHS BSA. When Mrs Y telephoned the helpline on 3 and 9 August 2016, it ought to have been on Mr R's record that Mrs Y had the appropriate LOA to acquire information about his pension. There was also no information in the letter of 5 July 2016 about the possibility of Mr R taking his benefits as a one off commuted lump sum.
61. While the Adjudicator accepted the information could be found in the Retirement Guide, the reality was Mrs Y found the information hard to follow. This was not surprising given the fact that her husband was dying, and she was finding the situation very frustrating. Further, given what the letter of 5 July 2016 said, it would have been reasonable for Mrs Y to wonder whether she had been provided with the right booklet and sought further information from NHS BSA, which NHS BSA did not provide to her during the subsequent telephone conversations.

Complaint 2

62. Mrs Y approached the IFA who was able to speak to NHS BSA on 12 August 2016 and to request an estimate of pension benefits. However, the September estimate arrived after Mr R died on 20 August 2016. NHS BSA said in the IDRP stage one decision that the timescale for producing an estimate of retirement benefits is 40 working days.
63. In the Adjudicator's view, regardless of NHS BSA's standard, the period of time of 18 days, in which the September estimate was provided, was unreasonable. Mr R was

suffering from a terminal illness, with a prognosis in June 2016 of “short weeks.” In the absence of any specific information given to Mr R about the level of commuted lump sum benefits available, time was clearly of the essence. Consequently, the Adjudicator’s view was that Complaint 2 should be upheld.

Complaint 3

64. The September estimate provided to Mr R was clearly wrong as it significantly overstated his length of pensionable service. NHS BSA has since acknowledged the error in the calculation. This amounted to maladministration. So, in the Adjudicator’s view, Complaint 3 should be upheld. NHS BSA has apologised for the error which was due to the electronic calculations which used Mr R’s incorrect pensionable service.

Complaint 4

65. As a consequence of the provision of the incorrect information in the September estimate, Mrs Y has expressed the concern that her survivor benefits might be incorrect. She has also said that the pension should be higher because Mr R earned a high salary while in pensionable employment.

66. Mr R did not make an election before he died, so Regulation F3 of the 1995 Scheme Regulations applied as he was a member who died with a preserved pension. Under Regulation F3(2), a lump sum equal to three times the yearly rate of the member’s preserved pension, calculated in accordance with Regulation L1 is payable. Under Regulation L1(3)(b), the preserved pension will be calculated by reference to Regulation E1(2).

67. Regulation G6 applied to a member who married after leaving pensionable employment, which the Adjudicator understood was the case here. Under Regulation G6(2), a widow’s pension will be equal to one-half of a pension calculated in accordance with Regulation E1. (See the Appendix).

68. It did not appear to be in dispute that Mr R’s revised period of pensionable employment was 19 years and 89 days, so it seemed that NHS BSA has now calculated Mrs Y’s benefits correctly. In the Adjudicator’s view, Complaint 4 should not be upheld.

Financial loss

69. In the Adjudicator’s view, it was not possible to conclude what Mr R would have elected to do, and Mrs Y was not able to show that but for these failings, how he would have elected to take his benefits. NHS BSA only sent the September estimate after Mr R had died so he could not have known what he would have received as a one off commuted lump sum or as a pension in payment, and in any event the information that he would have received was incorrect. Furthermore, the AW8P form was not completed and sent back, so Mr R’s pension remained preserved in the

Scheme. In the Adjudicator's view, if Mrs Y was claiming financial loss, it was not possible to quantify what loss, if any, there would have been.

70. It was also unclear what the outcome of the calls would have been had the helpline realised that Mrs Y had the necessary authority to obtain information on Mr R's behalf. It might have been that the helpline would not have been able to assist. This seemed possible, as the key missing evidence was the figures in the September estimate. Nonetheless, the helpline should have identified that Mrs Y had the authority to obtain the information on behalf of Mr R. Had it done so in one of the calls in which the handler refused to speak to Mrs Y, it might have recommended that Mrs Y request a statement sooner.
71. Further, in the Adjudicator's view, it was not possible to establish loss by the failure of NHS BSA to send the September estimate within a reasonable time frame. Mr R died on 20 August 2016, five working days after the request, so this information would need to have arrived before that point in order for Mr R to have had an informed basis for any decision, and this would be an unreasonably short time to have expected NHS BSA to have responded.
72. As set out above in paragraphs 54 to 64, in the Adjudicator's view there were several identifiable failings by NHS BSA namely:-
 - The failure to maintain proper records which would have shown the call handlers that Mrs Y had the requisite authority to seek information on behalf of Mr R.
 - The failure of the 5 July 2016 letter to refer to the possibility of taking a commuted one off lump sum.
 - The delay in providing the September statement.
 - Sending incorrect figures to Mr R which were significantly at variance with his actual benefit entitlements.
73. Although it was not possible to establish financial loss in this case, in the Adjudicator's view, these failings amounted to maladministration. This maladministration would have undoubtedly caused Mr R and Mrs Y non-financial injustice which would have significantly impacted them. This situation resulted in Mr R being unable to make an informed decision about how to take his benefits before he died.
74. The Pensions Ombudsman (**the PO**) cannot make a non-financial injustice award in relation to distress and inconvenience Mrs Y sustained in her capacity as executor of the Estate either before or after Mr R's death. Under section 147 Pension Schemes Act 1993, Mrs Y made a complaint of maladministration on behalf of Mr R in the period up to his death and any direction the PO would make was to compensate Mr R for the distress not Mrs Y.

75. But the PO can make an award in recognition of non-financial injustice which would be payable to the Estate as Complaints 1 and 2 arose while Mr R was alive, and were made on behalf of the Estate by Mrs Y.
76. In the Adjudicator's view, NHS BSA's failings identified in Complaints 1 and 2 would have undoubtedly caused Mr R serious distress and inconvenience at a time when he was suffering from serious ill health. For this, the Adjudicator's view was that NHS BSA should make an award of £1,000 payable to the Estate. Consequently, it was the Adjudicator's opinion that this complaint should be partly upheld.
77. Although Mrs Y was pleased with the Adjudicator's findings generally, she was not happy with the amount of redress recommended in her Opinion. Mrs Y made the following further points:-
- She referred to the PO's guidance for redress and she believes she falls into the "severe" category of distress and inconvenience suffered.
 - As soon as she received the form, she realised it could not be completed without the exact pension figures which NHS BSA never provided.
 - She requested pension figures in several telephone calls made to NHS BSA between 6 July and 3 August 2016 which do not seem to be referenced correctly. Although, this may not make any difference to the outcome, they are critical in appreciating NHS BSA's failings and the lengths she had to go in trying to do the right thing.
 - If her telephone calls had been dealt with properly, she would have applied for Power of Attorney. It is unquestionable that Mr R would have asked her to apply for it.
 - She has no doubt that if NHS BSA had handled the matter correctly, Mr R's pension could have been granted in time.
 - Mr R had made his intentions clear. He did not know the pension figures, but he was aware he could take it as a one off lump sum.
 - He expressed his intention to use the lump sum to pay their mortgage. Although she has nothing in writing to prove this, it does not make sense "that he (or anyone) would have made a different request to receiving his pension as a lump sum at that time and in his circumstances."
 - She is aware decisions have to be made within strict guidelines but feels that it is important that the record is correct in terms of the telephone calls she had made to NHS BSA and its responses as it does reflect on the assessment and conclusions.
78. I note the additional points raised by Mrs Y, and I agree with the Adjudicator's Opinion apart from the level of the Award.

Ombudsman's decision

79. There is no dispute between any of the parties that there was maladministration. NHS BSA should have, undoubtedly, taken steps earlier on in the process. However, I find that it is not possible to establish financial loss in this case. I appreciate Mrs Y said that Mr R made it clear to her what his intentions were in that he would have most likely opted for a one off lump sum. But in the absence of clear evidence, it is not possible for her to prove that this is the case.
80. Further, it is not possible to establish financial loss caused by the failure of NHS BSA to send the September estimate within a reasonable time frame. This information would need to have arrived before Mr R died in order for him to have made an informed decision. I find this would be an unreasonably short time to have expected NHS BSA to have responded to his request.
81. I also appreciate Mrs Y said she made further telephone calls to NHS BSA between 6 July and 3 August 2016. I have considered this along with NHS BSA's failings identified by the Adjudicator in Complaints 1 and 2 when deciding if a non-financial injustice should be made to the Estate.
82. I find that these failings would undoubtedly have caused Mr R severe distress and inconvenience before his death. I consider that an award of £2,000 is appropriate in this case given the number of failings which occurred before Mr R's death during the last few weeks of his life.
83. I partly uphold this complaint.

Directions

84. Within 28 days of the date of this Determination, NHS BSA shall pay the Estate £2,000 in recognition of the severe non-financial injustice it caused Mr R.

Anthony Arter CBE

Deputy Pensions Ombudsman
27 April 2023

Appendix

The NHS Pension Scheme Regulations 1995 (SI 1995/300)

F3. Member dies with preserved pension

“F3. (1) If a member leaves pensionable employment with a preserved pension under regulation L1 and dies before his pension under the scheme becomes payable, a lump sum on death shall be payable in accordance with regulation F5.

(2) The lump sum will be equal to 3 times the yearly rate of the member’s preserved pension, calculated as described in regulation L1.”

L1. Preserved pension

“L1(3) The member shall be entitled to receive the pension and retirement lump sum before age 60 if—

(a) the member is in NHS employment and the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of efficiently discharging the duties of that employment;

(b) the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment; or

(c) some other pension becomes payable to the member under any of regulations E1 to E5.”

E1. Normal retirement pension

“E1. (1) A member who retires from pensionable employment on or after attaining age 60 shall be entitled to a pension under this regulation.

(2) The pension under this regulation shall be at a yearly rate of 1/80th of final year’s pensionable pay for each complete year of pensionable service, plus the relevant daily proportion of that rate for each additional day of such service.”

G6. Member marries after leaving pensionable employment

“G6. (1) This regulation applies where the member and his wife were not married to each other during any period of pensionable employment.

(2) Subject to paragraph (3), the widow’s pension will be equal to one–half of a pension calculated as described in regulation E1 (normal retirement pension) on the basis of the member’s pensionable service after 5th April 1978.”