

Ombudsman's Determination

Applicant	Mrs Y
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Service Authority (NHS BSA)

Outcome

1. Mrs Y's complaint against NHS BSA is partly upheld. To put matters right, NHS BSA shall pay Mrs Y £500 for the significant distress and inconvenience she has suffered.

Complaint summary

2. Mrs Y has complained that she received incorrect information from NHS BSA between 2012 and 2016, concerning the benefits she could receive at retirement from the Scheme. She asserts that she has suffered a financial loss in reliance on the incorrect information.
3. She also complains that her pension entitlement may not have been calculated correctly, as it appeared that her annual leave, comprising of 432 hours, was not included in the calculations.

Background information, including submissions from the parties

4. In March 2012, Mrs Y requested from NHS BSA a statement of the benefits she could get from the Scheme at retirement. She requested this information to assist her in her Employment Tribunal (**ET**) claim against her previous employer.
5. On 16 March 2012, NHS BSA sent Mrs Y an estimate of the retirement benefits she could get from the Scheme (**the 2012 Statement**). The 2012 Statement listed Mrs Y's total pensionable pay as £43,971.01. The 2012 Statement informed Mrs Y that at retirement she could get:
 - an annual pension of £10,745.79; and
 - a tax free lump sum of £32,237.37.

Or, if Mrs Y chose to increase her tax free lump sum by giving up some of her annual pension, she could get:

- an annual pension of £8,635.01; and
 - a tax free lump sum of £57,566.74.
6. For both options, the survivor's pension was stated as £5,372.90 and the life assurance lump sum as £32,237.37.
 7. Mrs Y said that she agreed to settle her ET claim out of court, on 31 May 2012, based on the information in the 2012 Statement.
 8. On 22 January 2014, NHS BSA sent Mrs Y another benefit statement (**the 2014 Statement**). This statement informed Mrs Y that at retirement she could get:
 - an annual pension of £10,798.33; and
 - a tax free lump sum of £32,394.98.
 9. A survivor's pension of £5,399.16 was also stated.
 10. The 2014 Statement listed Mrs Y's pay as £43,244.45, and included the following caveat:

“Whilst we have made every effort to ensure that this quotation is accurate, you should be aware that 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” (original emphasis).

11. On 27 July 2015, NHS BSA sent Mrs Y another benefit statement (**the 2015 Statement**). This statement informed Mrs N that at retirement she could get:
 - an annual pension of £12,397.49; and
 - a tax free lump sum of £37,192.51.

Or, if Mrs Y chose to increase her tax free lump sum she could get:

- an annual pension of £9,962.27; and
 - a tax free lump sum of £66,415.14
12. A survivor's pension of £6,198.78 was also stated.
 13. This statement listed Mrs Y's pay as £43,244.45 and included the following caveat:

“Please be aware that this is an estimate and shown for guidance only. You should check the amount of Pensionable Pay quoted is consistent with your current pay or what would be the full-time equivalent pay if you currently work

part-time. If the figure is significantly different you should contact us. Figures are based on known information. Exact retirement figures cannot be given until final pay and service details are known.”

14. On 24 November 2016, NHS BSA sent Mrs Y details of the benefits payable, following her application for her retirement benefits (**the 2016 Statement**). It informed Mrs Y that she would be paid an annual pension of £6,721.37 from 28 September 2016, and that she would receive a net lump sum of £20,164.11. It also informed her that her benefits were calculated using a salary of £25,730.10.
15. On 28 December 2016, Mrs Y complained to NHS BSA through the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). In summary she said:-
 - She had recently reached her normal retirement age and was looking forward to receiving her pension from the Scheme, knowing that she would be financially secure for the rest of her life. When she received the 2016 Statement, she felt very upset and disappointed because it showed figures of approximately half of what she was previously informed she would get.
 - She expected a much larger pension based on previous estimates she had received. She appreciated that those figures were not guaranteed but she had made major decisions based on them.
 - To make matters worse, when she received her pension, it was less than quoted in the 2016 Statement. This left her with no confidence in NHS BSA’s systems.
 - She queried: (i) how the pension estimates had been calculated on the erroneous statements; (ii) why the lump sum was short by £1,146.75 when it was received; and (iii) if her monthly pension had been calculated correctly.
16. On 17 February 2017, NHS BSA replied to Mrs Y’s stage one IDRP complaint. In summary it said:-
 - While it was the administrative centre for the Scheme, it relied on NHS employers to supply the information it needed to update members’ records and to calculate benefits. It did not have access to employer payroll information.
 - At the end of each financial year, employers provided it with confirmation of how many hours each member had worked (if part-time), total pension contributions paid by both the employee and employer and pensionable pay information.
 - Its records showed that Mrs Y had three periods of active membership in the Scheme. As all the periods were part-time, the actual hours worked were converted to the whole time equivalent.
 - It provided details of the calculations used to complete the Statements Mrs Y was sent in 2012, 2014, 2015 and 2016 and said that due to the complexity of her case the computer system unfortunately could not accurately perform the calculations. So, the estimates should have been calculated manually.

- It was regrettable that Mrs Y had been led to believe that her retirement benefit entitlement would be greater than was actually the case, and it recognised and acknowledged the impact this might have had on her retirement planning. It apologised for the incorrect estimates that were provided.
 - Mrs Y's retirement benefits were calculated using her reckonable membership and the best of her last three years pensionable pay going back 365 days from her last day of membership. Because her earlier service was preserved, it had to calculate her benefits by comparing:
 - (i) her reckonable service up to 31 October 2011, including the transferred in service, pensionable pay of £23,659.48 and her later period of service using a pensionable pay figure of £36,190.41 with
 - (ii) her total service and a pensionable pay figure of £25,730.10.
 - Pension increases were applied to Mrs Y's pensionable pay figures. Her records were reviewed prior to the benefits being put into payment and the figures were calculated using revised information provided by her employers.
 - The provision of an estimate did not represent an undertaking on its part to pay the amounts shown. Mrs Y had been paid her correct benefits from the Scheme. The amounts put into payment were calculated in accordance with the provisions of the Scheme regulations.
17. Dissatisfied with the stage one IDRPs response, on 8 March 2017, Mrs Y appealed through stage two of the IDRPs. In summary she said:-
- The stage one IDRPs decision did not answer her questions.
 - She was not a pensions expert and relied on NHS BSA to calculate the estimates correctly.
 - She queried why the estimates had not been calculated manually if they should have been.
 - She requested details of the revised information NHS BSA had received to calculate her benefits that were put into payment.
18. On 3 May 2017, NHS BSA sent Mrs Y its stage two IDRPs decision. Its response is detailed below in paragraphs 19 to 33.
19. The responsibilities for the Scheme were shared between NHS BSA and employers. Employers were responsible for: recording the date a member commenced pensionable employment, their pensionable hours worked, pensionable pay for the year, any changes to their contracted hours from part-time to whole-time and submitting the details to it electronically.
20. NHS BSA compiled and maintained a membership history from all the data submitted by employers during the career of each member. This record of membership formed

the basis of any benefit calculations it undertook for the member. It did not have direct access to employer pensions and payroll systems, so it was unable to validate the information provided. The employee was responsible for checking the information provided for any inaccuracies, and to liaise with their employer to resolve them.

21. It was evident that Mrs Y was provided with erroneous benefit statements. Because of a change in computer systems, it was not able to view amendments made by employers using the previous system. However, it had accessed what her employer had provided in the most recent update.
22. Following further investigation it appeared that Mrs Y's membership record was correct up to and including 18 March 2009, when a membership statement was provided to the Scheme's Medical Advisers, following her application for ill health retirement.
23. In 2016, after it had received Mrs Y's application for her retirement benefits, the payroll for her previous employer provided further information about the period of employment that ended on 26 January 2010. This information affected the pensionable pay used in the calculation of her benefits.
24. While administering Mrs Y's retirement application, it had cause to question the number of disallowed days and pensionable pay details that had been notified by her employer, after the March 2009 membership statement had been issued. The hours and pay recorded for 2008 to 2009 did not appear correct when compared with the contributions paid.
25. Mrs Y's employer had updated her membership record to show that she had worked two pensionable hours between 1 April 2008 and 31 March 2009, and that her pensionable pay for this period was £8,000. So, her notional whole-time pay was significantly inflated.
26. As an automated process was used to calculate her previous estimates, this would not have recognised that her pay and hours were incorrect. It was the employer's responsibility to ensure that correct details were placed on a member's record.
27. While a manual calculation may have highlighted the error there was nothing to alert NHS BSA that a manual estimate was required at the time. This was because disallowed days had been added by her employer incorrectly, so a manual calculation alert was not created.
28. NHS BSA had calculated Mrs Y's retirement benefits in good faith based on the information received from her employer. It was only on receipt of her application for retirement benefits that it had cause to look in more detail at the pay used to calculate the benefits.
29. The figures on the 2012 Statement were calculated using a pensionable pay figure of £43,971. This was clearly shown at the top of the estimate. NHS BSA believed it was

reasonable that Mrs Y may have been aware that her whole-time equivalent pay in 2012 was not £43,971.

30. The figures on the 2014 and 2015 Statements, and her total reward statement were calculated using a pensionable pay figure of £43,244. This was because her record had not been updated correctly and this caused her pension and lump sum to be over inflated.
31. Although the errors had been recognised prior to the commencement of payments, NHS BSA had quoted the incorrect dates, for the purpose of applying pension increases, in its notification to the Scheme's paying agent. So, her pension was again amended, once payment had already commenced. It believed that this issue had been corrected and her pension benefits had been increased accordingly.
32. NHS BSA was unable to tell Mrs Y whether her pay included any reimbursement because it did not have access to her pay records. She would need to raise this with her employer's payroll if she believed any pay was missing. Any outstanding annual leave should have been added on to the end of her employment. So, her last day of service should have been extended by her remaining annual leave days. This issue would also need to be raised with her employer. Should her employer update her membership records further, it would be happy to amend her pension and lump sum, if that was required.
33. While it sympathised with Mrs Y, it had calculated her retirement benefits in the 2012, 2014 and 2015 Statements using the information that was available to it at the time. In such circumstances it was unable to determine that it had caused her to suffer any financial injustice. It was prepared to offer her a £500 ex-gratia payment in recognition of any distress and inconvenience that may have been caused by being provided with incorrect pension estimates.

Mrs Y's position

34. She was entitled to expect that her pension estimates on the Statements she had received were compiled with reasonable care and skill, and that their contents, while maybe not being the exact pension figure that she would receive, would have been indicative of the benefits she would receive at retirement.
35. Letters received from NHS BSA in response to her IDRPs were contradictory and its rationale for its calculation errors nonsensical. It appeared that NHS BSA was trying to justify its failings on a one-off payment that was made to her in or around October 2009. The payment was in respect of the reinstatement of contractual sick pay under what was then known as Annex Z of Agenda for Change.
36. The payment, which NHS BSA recorded as being £8,000 for two hours work, caused it to incorrectly calculate her salary to be approximately £43,000. The calculation did not add up. If the £8,000 earned for two hours was to be translated to an annual salary, it would have exceeded £7,000,000.

37. She did not receive a payment of £8,000 for the reinstated contractual sick pay. She received a gross payment of £13,693.12 and the net payment amounted to £9,871.51. There were further discrepancies concerning her pay which makes her question if the current pension she is receiving is accurate.
38. Her previous employer is no longer an organisation, so all responsibility for such matters now rests with NHS BSA. Her previous employer was disbanded on 31 March 2013. She does not understand how NHS BSA could have questioned her previous employer in 2016. There appears to have been a catalogue of maladministration by NHS BSA.
39. She also had concerns regarding whether her annual leave, comprising of an additional 432 hours, was included for the purposes of her retirement benefit calculations. From the correspondence, it did not appear that her pensionable membership was increased accordingly.
40. She relied on the incorrect information provided by NHS BSA in good faith, when making the decision regarding settlement of her ET claim in 2012, and when making future financial plans concerning her retirement. She changed her position in reliance on the incorrect information from NHS BSA. She is unable to divulge specific details of her ET case because of conditions placed upon her by the respondent.
41. Her financial detriment is the difference between the benefits she had expected to receive at retirement and what she is receiving. This reduction has left her without the level of reasonable financial security she believed she would have had for the rest of her life.
42. Had she known her correct benefit entitlement, she would have made a different decision concerning settling her ET claim. She would have allowed the case to go to court as she had every expectation of a satisfactory outcome.
43. To mitigate her circumstances since she became aware that she would receive less retirement benefits, to boost her State Pension she has:
 - been able to claim Specified Adult Childcare Credits since 2016, by looking after her grandchildren, in order to add credits to her National Insurance Contributions;
 - paid one year of voluntary National Insurance Contributions using her life savings; and
 - lived much more frugally than she had intended.
44. She and her husband had to undertake much of the necessary modernisation and repairs to their property themselves, as they were unable to afford to pay contractors to carry out the works. This was not how she was expecting to spend her time in retirement. They were exploring the possibility of sub-dividing their property to take in a tenant or lodger, to make up the shortfall in her retirement benefits.

45. She did not query the incorrect salary details on the 2012, 2014 or 2015 Statements because there is no reference to a salary on those Statements. There is reference to pensionable pay. Had the Statements used the term salary, current salary, current wage or similar, she would have queried the figures. She assumed pensionable pay was a figure arrived at by some “arcane pensions calculation.” She thinks it is reasonable that most people would probably think the same.
46. The failure of NHS BSA to provide her with correct information amounts to professional negligence and has left her financially worse off for the rest of her life. It is wholly negligent that NHS BSA did not obtain accurate figures before sending her the 2012 Statement, when it was aware that this information would be presented to a forthcoming ET.
47. It is totally and wholly without foundation and erroneous of NHS BSA to claim that she had accepted any settlement of £500 from it. She had not accepted this offer.

NHS BSA’s position

48. NHS BSA reiterated the comments made in its stage two IDR decision. It confirmed that an ex-gratia payment of £500 was paid to Mrs Y, in recognition of the distress and inconvenience caused.

Adjudicator’s Opinion

49. Mr Y’s complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA. The Adjudicator’s findings are set out below in paragraphs 50 to 69.
50. NHS BSA has agreed that it had provided Mrs Y with erroneous benefit statements between 2012 and 2015, so there was no dispute that maladministration had occurred.
51. NHS BSA providing Mrs Y with incorrect information amounted to maladministration. However, NHS BSA was reliant on information it received from employers to calculate benefits to which members of the Scheme were entitled. NHS BSA did not have access to members’ employment records such as their salary. So, it was the Adjudicator’s view that it was not unreasonable for NHS BSA to have expected that the information received from Mrs Y’s employer was accurate, for the purposes of calculating the figures detailed on the 2012, 2014 and 2015 statements. There was no reason for NHS BSA to have manually completed the calculation in respect of those benefit statements. She was of the view that there was no maladministration on the part of NHS BSA, the incorrect statements were as the result of errors made by the employer.
52. With regard to Mrs Y’s actual pension payment, it was not unusual for retirement benefits to be checked prior to being put into payment. In the Adjudicator’s view, had NHS BSA not completed this check following Mrs Y’s application for her retirement

benefits, it could have resulted in Mrs Y receiving an overpayment of benefits which she would have had to repay.

53. Mrs Y asserted that she had based her decision to settle her ET claim against her previous employer, on the incorrect information contained in the 2012 Statement. She said that she had suffered a financial loss as a result.
54. The 2012 Statement listed Mrs Y's total pensionable pay as £43,971.01. In the Adjudicator's view, as this pensionable pay was higher than Mrs Y's salary at the time, it should have put her on notice that the figures on the 2012 Statement may not have been correct. The Adjudicator noted Mrs Y's comment that she did not understand what pensionable pay referred to and that nowhere on the 2012 Statement did it use the word salary or something similar. However, the Adjudicator had completed an internet search and this said that pensionable pay is usually defined by the rules of the pension scheme. Typically, pensionable pay is basic salary, not including elements of an individual's earnings such as commission, bonuses and overtime.
55. In the Adjudicator's opinion, it would have been reasonable for Mrs Y to have contacted NHS BSA following receipt of the 2012 Statement, to confirm that the figures were correct, particularly as she said she had requested the figures in relation to her ET claim.
56. Further, it was the Adjudicator's view that Mrs Y had not demonstrated that she had suffered a financial loss because of her reliance on the incorrect information. When asked what she would have done differently had she been provided with correct information from 2012 onwards, Mrs Y said that she would have made a different decision at the out of court agreement stage, for her ET claim.
57. Mrs Y said because of the conditions placed on her by the respondent to her ET claim, she was unable to divulge details of the claim. Without this information, the Adjudicator said she was unable to conclude that Mrs Y's decision to settle her ET claim out of court was due only to the contents of the 2012 Statement. Further, Mrs Y had asserted that had she known the correct position, she would have pursued her issue with her previous employer through the courts, and that she had every expectation of a satisfactory outcome.
58. In the Adjudicator's view, it was not known what the outcome would have been had Mrs Y pursued her claim against her previous employer through the courts, or what financial settlement she would have been awarded, had her claim been successful. In the Adjudicator's view, any claim for financial loss that Mrs Y wanted to claim in this regard was too remote for the Adjudicator to conclude that she had suffered a financial loss because she relied on the information in the 2012 Statement, to settle her ET claim.
59. Mrs Y also asserted that she had changed her position in reliance on the incorrect information she received from NHS BSA from 2012 onwards. She said that she made

her future retirement plans based on the figures on the erroneous benefit statements she had received from NHS BSA.

60. A complaint of negligent misstatement must be based upon an inaccurate statement, usually called a 'representation'. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.
61. The Adjudicator accepted that the 2012, 2014 and 2015 Statements contained incorrect information concerning Mrs Y's benefit entitlement at retirement. However, it was the Adjudicator's view that the 2014 and 2015 Statements did not constitute a representation. This was because the figures on those Statements were not guaranteed. In the Adjudicator's view, it was not reasonable for Mrs Y to have relied on those figures when making decisions about her retirement. Further, the pensionable pay details, provided in the Statements, were clearly incorrect. This should have alerted Mrs Y that the pension benefits figures may not have been correct; she could have contacted NHS BSA for clarification.
62. In the Adjudicator's opinion, Mrs Y had not demonstrated that she had suffered a financial loss or changed her position in reliance on the incorrect information that she had received from NHSBSA. Further, Mrs Y was being paid the retirement benefits she was entitled to from the Scheme. In the Adjudicator's view, Mrs Y had suffered a loss of expectation.
63. The Adjudicator noted that when NHS BSA put Mr Y's retirement benefits into payment, they were less than stated in the 2016 Statement. NHS BSA explained that the retirement benefits put into payment were less because it had quoted the incorrect dates, for the purpose of applying pension increases, in its notification to the Scheme's paying agent.
64. In the Adjudicator's view, NHS BSA's failure to provide the correct dates, to the Scheme's paying agent, for the purposes of pension increases, amounted to maladministration on its part. This maladministration would have caused Mrs Y significant distress and inconvenience for which Mrs Y should receive an award, particularly as she had recently received the 2016 Statement which had informed her that her retirement benefits were going to be much less than she was expecting.
65. The Adjudicator noted that NHS BSA had said that it had previously paid Mrs Y £500 in respect of the distress and inconvenience she had suffered, but, Mrs Y had said that she did not accept the sum.
66. My Office has published guidance on redress for non-financial injustice which can be found on our website¹. Based on this guidance, it was the Adjudicator's opinion that

¹ https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/Updated-Non-financial-injustice-September-2018-2_0.pdf

£500 was an appropriate amount of redress to recognise the significant distress and inconvenience caused by NHS BSA's error in the payment of her pension. If the payment had not yet been made to Mrs Y, the Adjudicator's view was that NHS BSA should remedy this and make the payment now.

67. In relation to Mrs Y's concerns regarding whether her annual leave, comprising of 432 hours, was included in the calculation of her retirement benefits, NHS BSA had explained that she would need to contact her employer concerning this issue.
68. The Adjudicator appreciated that it would not be possible for Mrs Y to do so, as her previous employer was disbanded on 31 March 2013. However, NHS BSA could not be held responsible for the actions of Mrs Y's previous employer.
69. Mrs Y did not agree with the Adjudicator's Opinion. In response she said that she believed she was entitled to more compensation for the distress and inconvenience NHS BSA's errors had caused her.
70. As Mrs Y did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I have noted Mrs Y's additional comments and, I agree with the Adjudicator's Opinion.

Ombudsman's decision

71. I find there was maladministration in relation to the erroneous benefit statements NHS BSA had sent to Mrs Y between 2012 and 2015. This maladministration was caused by the employer. Because of the incorrect information received by NHS BSA the Statements showed incorrect pension benefits.
72. NHS BSA is reliant on information from employers to produce benefit statements for members of the Scheme. It does not have access to employee records directly. I find no fault with NHS BSA for expecting the information it receives from employers to be accurate.
73. Further, Mrs Y could have checked the information on the erroneous statements and queried the meaning of pensionable pay, if she did not understand what it meant. Clearly, the figures were much higher than the salary she was in receipt of at the time and should have rung an alarm bell for Mrs Y, especially, as she said she was relying on the 2012 statement in order to settle her ET claim. Had she queried the pensionable pay earlier, it would almost certainly have highlighted the error to NHS BSA in 2012.
74. I find that NHS BSA's maladministration in quoting incorrect dates to the Scheme's paying agent, for the purpose of applying pension increases, resulting in lower pension benefits paid than those stated on the 2016 Statement, would have caused Mrs Y significant distress and inconvenience.
75. I find an award of £500, to recognise the significant distress and inconvenience as set out in paragraph 74 above, is sufficient.

CAS-41364-B2L7

76. I uphold Mrs Y's complaint in part.

Directions

77. Within 28 days of the date of this Determination, if NHS BSA has not already paid Mrs Y £500 they shall do so now, in respect of the significant distress and inconvenience Mrs Y has suffered.

Anthony Arter CBE

Deputy Pensions Ombudsman
10 March 2023