

Ombudsman's Determination

Applicant	Dr S
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA) Gloucestershire Health & Care NHS Foundation Trust (Gloucestershire NHS Trust)

Outcome

1. Dr S' complaint against NHS BSA and Gloucestershire NHS Trust is partly upheld. To put matters right for the part that is upheld, NHS BSA and Gloucestershire NHS Trust shall each pay £250 to Dr S in recognition of the significant distress and inconvenience that she has been caused.

Complaint summary

2. Dr S complained that she was given a number of pension estimates by NHS BSA, but when she decided to take her benefits, the final pension amount calculated was significantly lower than the previous estimates.
3. Dr S said that if she had been given accurate figures in the estimates, she would have chosen to continue working part-time and not made the decision to retire.

Background information, including submissions from the parties and timeline of events

4. Dr S had three separate periods of employment with the NHS and was an active member of the 1995 section of the Scheme during this time. The relevant dates were June 1988 to January 1993, then March 1994 to September 1998, and December 2001 to August 2004. The latter of the three periods included employment with NHS Gloucestershire, a predecessor organisation of Gloucestershire NHS Trust. After leaving the NHS in August 2004, Dr S was employed as a university lecturer.

5. On 4 August 2016, Dr S accessed the Total Reward Statement (**TRS**) for her pension benefits in the Scheme. It set out an estimated annual pension of £7,885.83, with a lump sum of £23,657.48. This was based on retirement at the normal pension age (**NPA**) of 60, reckonable membership of 10 years and 92 days, and an annual pay figure of £45,741.15, updated to 31 August 2004.
6. This, and subsequent, TRS correspondence included the statement:

“Please be aware 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 your employer.”
7. On 21 August 2018, Dr S accessed her TRS. It gave an updated estimate for her annual pension of £8,060.51, with a lump sum of £24,181.52. This was again based on retirement at her NPA, reckonable membership of 10 years and 92 days, and a pay figure of £45,741.15, updated to 31 August 2004.
8. On 13 May 2019, NHS BSA wrote to Dr S to advise that she was approaching her NPA, so may be able to claim her benefits from the 1995 section of the Scheme. An estimate of the amount she could receive was available via the TRS.
9. On 7 June 2019, Dr S accessed her TRS. The estimated pension figures were the same as those in the 21 August 2018 TRS.
10. On 23 September 2019, Dr S emailed NHS BSA to ask how she could find out more information about her last employment and dates. NHS BSA responded to explain that if she wanted a membership statement, showing her employer and membership dates for the 1995 and 2008 sections of the Scheme, she should complete form SM27A. Once returned, NHS BSA aimed to process the form within 30 days.
11. On 25 September 2019, Dr S accessed her TRS. It set out an estimate for her annual pension of £8,302.01, with a lump sum of £24,906.03. This was based on retirement at her NPA, reckonable membership of 10 years and 92 days, and a pay figure of £45,741.15, updated to 31 August 2004.
12. On 30 September 2019, NHS BSA received Dr S' application for payment of her preserved pension rights.
13. On 5 December 2019, Dr S retired from her employment as a senior university lecturer.
14. On 30 December 2019, Dr S wrote to NHS BSA to raise a complaint. She said she had received regular estimates, which showed an increase in her pension amount. Her partner had telephoned NHS BSA, on her behalf, in early-December 2019 and was told that her projected pension was slightly higher than the latest estimate she had obtained. During the conversation, NHS BSA also explained that it was waiting for some additional information from Gloucestershire NHS Trust.

15. Dr S went on to explain that she learned in mid-December 2019, after she had left her employment as a lecturer, that she was to receive a far lower pension than expected. Her annual pension was now going to be £5,497.87 and the lump sum payment was £16,493.59. She was unclear why a discrepancy in her pay for a relatively brief period of employment with NHS Gloucestershire had such a large impact on her pension amount. She was unhappy that NHS BSA had not obtained accurate information in the intervening years since she left this employment.
16. On 6 February 2020, Dr S wrote to NHS BSA to complain about the difficulties she had experienced in receiving payment of her pension benefits. NHS BSA had attempted to carry out the payment of Dr S' pension arrears and lump sum on 9 December 2019, but the bank account details it used were incorrect. Dr S said she provided the correct details, but NHS BSA did not input them correctly. NHS BSA then told her that payment would be made on 4 February 2020, but this did not happen. Dr S was unhappy that her pension payments were delayed, and she and her partner had not been kept informed by NHS BSA.
17. On 21 February 2020, NHS BSA issued its stage one complaint response under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). It explained that it does not have access to payroll information and relies on NHS employers to provide pay and membership data for its calculation of members' pension benefits. It said that the employers' responsibilities are set out in the NHS Pension Scheme Employer's Charter.
18. NHS BSA explained that as a member of the 1995 section of the Scheme, the value of Dr S' benefits was based on her accrued reckonable membership and highest pensionable pay figure for her last three years of active membership.
19. When it came to calculating Dr S' pension, NHS BSA noted that the pensionable pay figure of £45,741.15 seemed higher than would be expected for her grade of employment. It therefore contacted the relevant employer, now Gloucestershire NHS Trust, and an exchange of emails took place between October and November 2019. On 28 November 2019, Gloucestershire NHS Trust submitted revised figures of £29,431.73 for pensionable pay and 10 years and 111 days for reckonable membership. NHS BSA then calculated Dr S' pension benefits on 4 December 2019.
20. NHS BSA said it did not uphold Dr S' complaint, because the incorrect information it previously held was provided by the employer. It also explained that Dr S' correct bank account details were established on 31 December 2019. The pension arrears and lump sum payments were reissued on 7 February 2020 and 12 February 2020, respectively.
21. On 16 March 2020, Dr S wrote to NHS BSA to request the complaint be moved to stage two of the IDRP.

22. On 15 July 2020, NHS BSA issued its stage two response for Dr S' complaint. It set out that Dr S' final period of NHS employment was between 1 August 2004 and 31 August 2004, with NHS Gloucestershire. Her final salary for retirement benefit purposes was her highest year's earnings within the last three years of her membership of the Scheme, up to 31 August 2004.
23. NHS BSA reiterated that when it came to calculating Dr S' pension benefits, it noticed that the pensionable pay figure appeared to be higher than would be expected. It made enquiries with Gloucestershire NHS Trust in November 2019 and obtained the correct pay figure of £29,431.73, which was used for the calculation.
24. NHS BSA acknowledged that the pension estimates provided to Dr S prior to her retirement were consistently based on an incorrect pay value. The error was not discovered until after she had committed to retirement. NHS BSA accepted it could potentially have identified the discrepancy at an earlier time, but said it was reliant on the employer for timely and accurate updates to its records.
25. NHS BSA explained that it was only as part of the final benefit calculation that more detailed validation of the data had been carried out. It believed it would have been possible for Dr S to have identified that the TRS estimates used an overstated figure for her pensionable pay, as this information was clearly displayed.

Dr S' position

26. She based her decision to retire on the information she was given in the TRS pension estimates. She accepts that the figures were only an indication, but in her case, they were wildly inaccurate.
27. She does not think it is reasonable to have expected her to notice the discrepancy in the pay figure and believes it was NHS BSA's responsibility to check the information.
28. Upon choosing to retire, she gave up a well-paid job as a university lecturer, but has had to go back to work for the NHS on a zero hours contract. This has had a significant effect on her financial position and her mental health. She has not been able to proceed with her plans for retirement.

NHS BSA's position

29. The Scheme is administered jointly between NHS BSA and NHS employers. While membership of the Scheme is ongoing, employers provide NHS BSA with annual updates, which include details of the total contributions paid, pensionable pay, any changes to whole or part-time employment, and the number of days or hours worked. The updates also indicate the capacity in which the member is employed, but not the actual job title.

30. Due to the wide variation in levels of pay and movement of staff across the NHS, its processes and data tolerance levels must allow for a broad range in pay. It does not have access to employers' payroll records, so is reliant on employers to provide accurate pay and membership data. If an employer submits information that is inaccurate, but meets data tolerance levels, such that the inaccuracy cannot easily be identified, this information may still be accepted onto its records.
31. When a member submits an application for retirement benefits, there is more information available via the application form, and because the membership records are finalised and complete. This enables more detailed checks to be made of members' pay and membership history before benefits are paid.
32. The estimated retirement benefits shown on a member's TRS are based on the latest pay value provided by the employer in their annual update. Benefits for the 1995 section of the Scheme are calculated using the highest of the final three years' pensionable pay, the 'final salary' value, up to the date the member left or retired.
33. It was reliant on Gloucestershire NHS Trust, previously NHS Gloucestershire, to provide timely and accurate information for Dr S. Her estimated final salary value of £45,741.45, upon which her TRS estimates were based, was the total earnings of which it had been notified for her final 365 days of NHS employment. During its assessment of her retirement benefit entitlement, it became apparent that the final salary value was high, in comparison to the rate of pay it would have expected for her employment role. The inaccuracy of this value was compounded by the employer's incorrect notification that Dr S had worked part-time throughout. Enquiries were made with Gloucestershire NHS Trust in November 2019 and the correct figures were obtained. Dr S is now in receipt of the correct level of benefits.
34. The TRS correspondence advised that the figures quoted were an estimate and drew attention to the need to check that the pensionable pay figure was consistent with the member's actual pay. Dr S' TRS estimates, produced between 2016 and 2019, displayed the overstated final salary value of £45,741.45, so she did have the opportunity to query this figure.

Gloucestershire NHS Trust's position

35. NHS BSA's records incorrectly showed Dr S as moving from part-time status on 14 June 2004 to whole-time status between 1 August 2004 and 31 August 2004.
36. NHS BSA initially queried Dr S' annual membership data on 10 October 2019. It provided responses to NHS BSA, with the correct information, on 11 October 2019 and 28 November 2019.
37. It was unsure why NHS BSA had not identified the pensionable pay discrepancy earlier. It does not accept responsibility for the complaint issue, which should have been remedied by NHS BSA.

38. When the retirement claim was processed, NHS BSA did not contact Dr S to make her aware of the reduction in expected benefits, so prevented her from having the opportunity to alter her plans.
39. The TRS estimates provided to Dr S clearly state that the figures are not guaranteed. She did not query the pensionable pay amount, despite it being overstated. Ultimately, estimates are given for guidance only and employees are required to check the data quoted is consistent with their pay and employment status.

Adjudicator's Opinion

40. Dr S' complaint was considered by one of our Adjudicators, who concluded that further action was required from NHS BSA and Gloucestershire NHS Trust. The Adjudicator's findings are summarised below:-
 - There was maladministration by NHS BSA and what is now Gloucestershire NHS Trust in the provision of incorrect information to Dr S, and the failure to inform her at the earliest opportunity of the lower pension amount. However, Dr S is not entitled to the overstated benefits, quoted in her TRS estimates, and is in receipt of the correct level of benefits.
 - It would have been possible for Dr S to have noticed that the TRS used an incorrect pay figure and raised this issue with NHS BSA. The Adjudicator's view was that it was not reasonable for Dr S to have relied on the TRS estimates.
 - Dr S suffered distress and inconvenience, because of the incorrect information she was given. Gloucestershire NHS Trust was considered to be the party responsible for the incorrect pay information that had generated the overstated estimates. It was also noted that NHS BSA proceeded to administer Dr S' pension without prior notification of the considerable difference in what she was to receive, compared with the previous estimates. This meant that an opportunity was missed to have allowed Dr S more time to consider her course of action, which added to her distress and inconvenience.
 - It was recommended that Dr S be paid £500 in recognition of the significant distress and inconvenience she has experienced. Payment of this sum was to be split between NHS BSA and Gloucestershire NHS Trust, as the Adjudicator considered that both parties held responsibility for the distress and inconvenience.
41. Dr S did not accept the Adjudicator's Opinion. She acknowledged that the figures quoted in her TRS were estimates but felt that the sum of £500 did not fairly reflect the shortfall in her pension.
42. As Dr S did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Dr S' comments do not change the outcome and I agree with the Adjudicator's Opinion.

Ombudsman's decision

43. NHS BSA and Gloucestershire NHS Trust both accept that Dr S was given incorrect information in her TRS estimates. They contend that Dr S could have identified the incorrect pay figure that was used to generate the estimates. Dr S accepts that the pension quoted in her TRS was an estimate and not guaranteed.
44. Although Dr S' TRS estimates were based on an incorrect pay figure, the correct information for the calculation of her pension was obtained before it was put into payment. I find that Dr S is now in receipt of the correct amount of pension, according to the regulations of the Scheme. This means that she is not entitled to receive a higher level of pension from the Scheme.
45. I find that it was not reasonable for Dr S to have relied on the estimates, given that the incorrect pay figure was displayed on the first page of the TRS. The TRS also included a recommendation to check that the figure used was consistent with actual pay. The level of pay received in previous employment is something that is generally known and understood, so the discrepancy was identifiable in this case.
46. However, the provision of incorrect information by a predecessor of Gloucester NHS Trust and NHS BSA's failure to inform Dr S, at the earliest opportunity, that her pension was to be much lower than previously estimated amounts to maladministration. I find that the maladministration of both respondents has caused Dr S to suffer distress and inconvenience.
47. The value of an award for distress and inconvenience is not derived from any claimed level of pension shortfall. It reflects the inconvenience suffered, through the time and effort spent on the matter, as well as the distress caused by its effects.
48. I find that an award of £500 is appropriate recognition of the significant distress and inconvenience Dr S has been caused by the respondents' maladministration. Payment of the award should be split equally between NHS BSA and Gloucestershire NHS Trust.
49. I partly uphold Dr S' complaint.

Directions

50. Within 28 days of the date of this Determination, NHS BSA and Gloucestershire NHS Trust shall each pay £250 to Dr S.

Anthony Arter

Pensions Ombudsman
6 December 2022