

## Ombudsman's Determination

|            |  |
|------------|--|
| Applicant  | Mrs R  |
| Scheme     | NHS Pension Scheme ( <b>the Scheme</b> )           |
| Respondent | NHS Business Services Authority ( <b>NHS BSA</b> ) |

## Outcome

1. Mrs R's complaint against NHS BSA is partly upheld. To put matters right for the part that is upheld, NHS BSA shall pay £1,000 to Mrs R in recognition of the serious distress and inconvenience it has caused her.

## Complaint summary

2. Mrs R complained that she took the decision to retire on the basis of figures she was given in a retirement quotation, dated 28 November 2019. When her pension was put in place, the actual amount she was to receive was substantially lower than the quotation.
3. Mrs R said it is unlikely she would have chosen to retire, had she been given accurate figures in November 2019. She was the sole income-earner in the family and she and her husband have a dependent child.
4. Mrs R has been diagnosed with anxiety and depression. She thinks insufficient care was taken by NHS BSA in the handling of her complaint. This has led to increased anxiety and further detriment to her mental health.

## Background information, including submissions from the parties

5. Mrs R became a member of the 1995 Section of the Scheme on 1 September 1986 and left the Scheme on 31 March 2020.
6. Estimates of Mrs R's potential pension benefits were given on the following dates: 4 November 2014, 10 January 2018, 12 December 2018, 22 August 2019, and 28 November 2019.

7. In 2019, Mrs R learned that she had been eligible for protection of pensionable pay for her membership up to 1 May 2016. It meant her salary for the purpose of pension benefits calculation was protected up to 1 May 2016, at the higher level of £57,095.80, even though she had later moved to a role with a reduced salary. The final pay figure used for the post 1 May 2016 part of the calculation of her benefits was £50,819.40.
8. Mrs R contacted NHS BSA to request a pension quotation that included the protection of pay for retirement at age 55.
9. On 28 November 2019, NHS BSA sent Mrs R an estimate of £33,667.72 for her annual pension and a lump sum estimate of £101,003.15 (**the November 2019 quotation**).
10. The covering letter for the November 2019 quotation included the following statement:

“Whilst we have made every effort to ensure that the information provided is accurate, you should be aware that this statement is an estimate only.”
11. The previous quotations, listed in paragraph 6, had consistently given a lower value for expected benefits, but did not include the protection of pay in the calculations. Mrs R said she contacted the NHS pension members’ helpline to discuss the November 2019 quotation. She recalls being verbally advised on two separate occasions that it would be very close to the actual amount she would receive.
12. Mrs R has explained that she did not doubt the accuracy of the November 2019 quotation, because although the figures were substantially higher than previous quotations, she understood this was due to the inclusion of the protection of pay in the calculations.
13. On 10 January 2020, Mrs R submitted the retirement benefits claim form via her employer to NHS BSA, indicating her decision to retire.
14. On 25 March 2020, Mrs R was issued with confirmation that she would receive an annual pension of £30,244.40 and lump sum of £90,733.20.
15. On 29 May 2020, Mrs R complained to NHS BSA about the reduction in her pension benefits compared to the November 2019 quotation. The stage one response under the Internal Dispute Resolution Procedure (**IDRP**) was issued on 31 July 2020 (**the July 2020 letter**).
16. NHS BSA explained in the July 2020 letter that the November 2019 quotation incorrectly used a figure of 43 years and 212 days for Mrs R’s membership of the Scheme. This figure should have been restricted to 40 years, as Mrs R was retiring at age 55 and benefitted from ‘doubled membership’, due to her mental health officer (**MHO**) status.

17. Doubled membership is included as part of the 1995 Section of the Scheme, where a member works in an MHO-qualifying post. It applies once the member has reached 20 years' service and every year of service thereafter is treated as two years for the purposes of pension scheme membership.
18. The regulations for the 1995 Section of the Scheme state that for a member retiring at age 55, the membership is capped at 40 years, even if the doubling factor would otherwise take it beyond this length.
19. The quotations sent to Mrs R prior to 28 November 2019 used the appropriate membership length, though did not include the protection of pensionable pay.
20. NHS BSA said in the July 2020 letter that Mrs R's annual pension income of £30,244.20, calculated upon retirement, was correct according to the Scheme's regulations.
21. Mrs R was unhappy with the response at stage one of the IDRP, so requested the complaint be reconsidered under stage two; NHS BSA responded on 13 October 2020 (**the October 2020 letter**).
22. The October 2020 letter reiterated that the incorrect membership length had been used in the November 2019 quotation. NHS BSA's notes indicate that Mrs R did make contact to discuss whether the protection of pay had been factored into the quote, but there is no record of her raising the issue of length of membership.
23. NHS BSA considers that the membership length used for the quotations was clearly set out in the correspondence. The relevant Scheme regulations, in relation to doubled membership and retirement at age 55, are available on the NHS website.
24. NHS BSA said Mrs R could have identified the error in the November 2019 quotation and queried this further. However, NHS BSA acknowledged in the October 2020 letter that because of the discrepancy between the November 2019 quotation and the actual pension benefits calculated, Mrs R should have been notified of this prior to it being put into payment.

## **Adjudicator's Opinion**

25. Mrs R's complaint was considered by one of our Adjudicators, who concluded that NHS BSA had provided incorrect information. The Adjudicator's findings are summarised below:-
  - There was maladministration by NHS BSA in the provision of incorrect information to Mrs R. However, Mrs R would not be entitled to the overstated benefits and is in receipt of the correct level of benefits, according to the Scheme regulations.

- The Adjudicator considered that it would have been possible for Mrs R to have noticed the discrepancy in the November 2019 quotation and raised the issue with NHS BSA. Further, the Adjudicator felt there was insufficient evidence to conclude that Mrs R would not have chosen to retire, if given the correct information.
  - The Adjudicator noted that Mrs R had suffered distress and inconvenience, because of the incorrect information given by NHS BSA. This exacerbated her existing diagnosis of anxiety and depression.
  - NHS BSA had already offered Mrs R £500, but the Adjudicator recommended this be increased to £1,000, in recognition of the serious distress and inconvenience experienced by Mrs R.
26. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs R, which are summarised below:-
- Mrs R understands that she is not entitled to the incorrect level of benefits set out in the November 2019 quotation.
  - She made attempts to query her pension benefits on two occasions and was verbally assured that the estimates were very close to the actual amount she would receive. She relied on this information and understood that the representatives she spoke to were authorised to give the information.
  - She does not think £1,000 is sufficient recompense for the distress and inconvenience she has suffered over the extended period that this matter has been ongoing. The pension she now receives is significantly lower than she had expected. Her financial position and mental health have suffered as a result.

### **Ombudsman's decision**

27. Mrs R complained that she took the decision to retire on the basis of the figures she was given in the November 2019 quotation. Mrs R accepts she is not entitled to the incorrect level of benefits stated in the November 2019 quotation, but has said that she would not have retired had she been given the correct information.
28. NHS BSA agreed that the November 2019 quotation was incorrect, but contends that the membership length used for the quotations was clearly set out in the correspondence. It considers that Mrs R could have identified the error in the November 2019 quotation and queried this further.

29. I acknowledge that Mrs R discussed the level of the benefits in the November 2019 quotation with NHS BSA, but only in relation to whether the protection of pay had been included, which it had. The issue that led to the benefits being incorrectly calculated was that pensionable service was not restricted to 40 years. The evidence is that there were other sources of information available to Mrs R, which would reasonably have highlighted the error in the pensionable service used. It follows that it was unreasonable for Mrs R to have relied on the November 2019 quotation.
30. The provision of misinformation is maladministration and the matter will have caused Mrs R serious distress and inconvenience, particularly in regard to her mental health. While I acknowledge the detrimental impact this has had, I find that an award of £1,000 is appropriate recognition of the effect on Mrs R. So, I partly uphold Mrs R's complaint.

## **Directions**

31. Within 28 days of the date of this Determination, NHS BSA shall pay £1,000 to Mrs R.

**Anthony Arter**

Pensions Ombudsman  
29 September 2022