Ombudsman's Determination

Applicant	Mrs K
Scheme	NHS Pension Scheme (**the Scheme**)
Respondent	NHS Business Services Authority (**NHS BSA**)

Outcome

1. Mrs K's complaint is party upheld. To put matters right NHS BSA shall pay Mrs K £1,000 in recognition of the serious distress and inconvenience which she has suffered.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs K has complained that she was provided with incorrect information regarding her pension by NHS BSA, the administrator of the Scheme. As a result, she says the estimates she relied on in her decision to retire were overstated and she suffered financial loss.

Background information, including submissions from the parties

4. The sequence of events are not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

5. Mrs K was a member of two separate sections of the Scheme:-

   - The 1995 Section of the Scheme (the **1995 Section**), a final salary defined benefit arrangement from 5 February 1990 until 31 May 2020.

   - The 2015 NHS Pension Scheme (the **2015 Scheme**): From 1 June 2020 onwards she transitioned to the 2015 Scheme until 5 March 2021. The 2015 Scheme is a Career Average Revalued Earnings (**CARE**) arrangement.

6. On 19 July 2018, Mrs K's Employer provided her with a benefit estimate calculated with early retirement deductions. It calculated her benefits as an annual pension of £6,786.05 and a lump sum of £21,926.08. If she elected to receive the maximum lump sum, her pension would be reduced to an annual sum of £5,537.07 with a lump

sum of £36,913.81. Her Employer had a separate Pensions Team who assisted her and provided the estimates.

7. On 5 May 2020, two events took place:-

- Mrs K emailed her Employer to request an early retirement estimate.
- Mrs K's Employer provided her with a correct early retirement estimate following her enquiry about early retirement. It confirmed she would receive an annual pension of £8,212.03 and a lump sum of £26,172.34.

8. On 28 October 2020, Mrs K's Employer provided her with an age retirement estimate. It calculated her pension benefits as an annual pension of £17,362.35 and a lump sum of £52,087.07. With the maximum lump sum she would receive an annual pension of £13,951.88 and a lump sum of £93,012.59.

	Annual sum	**Lump sum**
5 May 2020 (early retirement)	£8,212.03	£26,172.34
28 October 2020 (age retirement) (Incorrect)	£17,362.35	£52,087.07
Difference	**- £9,150.32**	**- £25,914.73**

9. On 4 November 2020, Mrs K emailed two different representatives of her Employer to query which estimate was correct, double check the estimate, and request a new estimate.

10. On 10 November 2020, two incorrect benefit estimates were provided:-

- Mrs K's Employer provided her with another age retirement estimate, which confirmed the figures illustrated on 28 October 2020. It again confirmed an annual pension of £17,362.35 and a lump sum of £52,087.07. With the maximum lump sum she would receive an annual pension of £13,951.88 and a lump sum of £93,012.59.
- She also received a benefit estimate produced by Pensions Online, which took into account her reduction for early retirement. It calculated her pension as an annual sum of £16,303.64 and a lump sum of £50,933.32. With the maximum lump sum she would receive an annual pension of £13,209.49 and a lump sum of £88,063.21.
- In email correspondence between Mrs K and her Employer, it informed her that she needed to provide three months' notice prior to retiring.

11. On 11 November 2020, Mrs K emailed her Employer to enquire if she would receive a final figure of what her lump sum and annual pension would be to ensure ‘it works for me’ prior to handing in her notice.

12. On 25 November 2020, Mrs K emailed her Employer to request the AW8 retirement pack and notify it of her intention to retire, with her last working day being 5 March 2021.

13. On 13 January 2021, NHS BSA received Mrs K’s application for her retirement benefits. Mrs K requested the age retirement benefits from the 1995 Section and the reduced early retirement pension benefits from the 2015 Scheme. NHS BSA then contacted Mrs K’s Employer as she was still under the retirement age for the 1995 Section. The Employer confirmed that Mrs K wanted to claim the reduced early retirement pension benefits from her 1995 Section. Upon receiving Mrs K’s options choice, NHS BSA confirmed she would receive an annual pension of £7,026.46 and a lump sum of £46,843.10 upon retirement.

	Annual sum	**Lump sum**
Incorrect Employer estimate of 10 November 2020 (max lump sum)	£13,951.88	£93,012.59
Incorrect Pensions Online estimate of 10 November 2020 (max lump sum)	£13,209.49	£88,063.21
Correct 13 January 2021 quote	£7,026.46	£46,843.10

14. On 5 March 2021, Mrs K retired.

15. On 11 March 2021, NHS BSA wrote to Mrs K to inform her that:-

- She was eligible to receive a trivial commutation lump sum[1] in regard to her 2015 Scheme benefits. It provided her calculated options for her 2015 Scheme benefits but, having received no response, it was yet to be put into payment.

- It had correctly calculated her early retirement pension benefits as an annual pension of £7,026.46 and a lump sum of £46,843.10.

16. On 16 March 2021, two events took place:-

- NHS BSA paid Mrs K the calculated 1995 Section pension benefits quoted to her on 11 March 2021.

- Mrs K telephoned NHS BSA to query the difference between the amount she was expecting and the actual amounts paid.

[1] Trivial commutation allows individuals to take their entire pension as a one-off lump sum. Subject to certain conditions and limits.

17. On 25 March 2021, NHS BSA wrote to Mrs K regarding her 1995 Section benefits. It provided her with the correctly recalculated estimate of her pension benefits showing an annual pension of £7,033.49 and a lump sum of £46,889.96.

18. On 31 March 2021, Mrs K telephoned NHS BSA to chase up her call of 16 March 2021, querying the difference in her pension benefits.

19. On 13 April 2021, NHS BSA wrote to Mrs K and explained the difference between her incorrect estimates and the correct one she received.

20. Mrs K has stated she telephoned NHS BSA on 19 April 2021 and 11 May 2021.

21. On 26 May 2021, NHS BSA paid Mrs K £1.30 due to a revised increase in her 1995 Section membership as it had received additional information from her Employer. It paid a further £0.01 for the late payment of the benefits.

22. On 28 May 2021, NHS BSA paid Mrs K a further £46.86 due to the revised membership figures.

23. In June 2021, NHS BSA informed Mrs K that the October and November estimates had been wrong. She was provided the option to cancel her retirement and return to work without penalty.

24. On 29 June 2021, Mrs K telephoned NHS BSA. She informed them that she was suffering financial hardship due to the mistake.

25. Between 2 July 2021 and 29 September 2021, Mrs K made numerous calls to pursue her query.

26. On 18 November 2021, NHS BSA provided Mrs N a second incorrect estimate calculated for the early retirement of her 2015 Scheme benefits. It incorrectly calculated her pension benefits as an annual sum of £16,303.64 and a lump sum of £50,933.32.

	Annual sum	**Lump sum**
28 October 2020 (Incorrect)	£17,362.35	£52,087.07
18 November 2021 (Incorrect)	£16,303.64	£50,933.32

27. On 21 October 2021, Mrs K wrote to NHS BSA requesting for her complaint to be escalated to NHS BSA's two stage Internal Dispute Resolution Procedure (**IDRP**) on the following grounds:-

- She made the decision to retire early on 5 March 2021. She was aware of the 10% reduction to her pension for early retirement. Upon retiring her expected pension was reduced by up to 50%. Additionally, she did not receive a lump sum or her pension, only one payment of £45 in May 2021.

- The estimates contained the incorrect retirement date.

- She was informed by NHS BSA in June 2021 that its calculation for her pension benefits was wrong. She was provided the option to cancel her retirement and return to work without penalty. However, her position was no longer available due to Team restructures resulting from her retirement.

- Had it not been for the incorrect information provided to her by NHS BSA, Mrs K would not have made the decision to retire early. She relied on the incorrect information in good faith, believing she would receive the lump sum and pension benefits illustrated in the incorrect benefit estimate of 18 November 2021. As a result, she has suffered financial detriment and is unable to live on the corrected amount.

- Her complaint had been ongoing since April 2021 with no outcome. Further, NHS BSA failed to contact her despite informing her that her complaint would be processed as a ‘financial hardship’ claim, and she would be contacted after 15 days. As a result, she suffered stress and anxiety.

28. On 3 December 2021, NHS BSA issued its IDRP Stage 1 decision. In summary:

    - It acknowledged and apologised for the incorrect estimate of 18 November 2021, which was system generated and caused by a system error.

    - It further recognised Mrs K’s statement that she queried the incorrect estimate. However, it emphasised that NHS BSA did not receive any queries about the estimate. It noted that while she may have queried it with her Employer, it was a separate organisation from NHS BSA. As such, it could not confirm any incorrect advice presented by the Employer and had no access to said queries.

    - Its position was that, at the time Mrs K retired, she had been presented with her correctly calculated pension benefits, which matched the earlier estimate of 5 May 2020. Overall, NHS BSA were only able to pay her the benefits which she was entitled to.

29. On 19 January 2022, Mrs K contacted NHS BSA and requested her complaint be escalated to Stage 2 of the IDRP.

30. On 21 March 2022, NHS BSA wrote to Mrs K and provided its IDRP Stage 2 decision. It concluded:-

    - Mrs K received consistent estimates between 15 March 2012 and 5 May 2020 that contained the correct information and displayed a consistent increase each year. It was between 28 October 2020 and her retirement date that she was provided with incorrect information about her pension benefits.

- It identified the significant increase in her estimates over approximately a five-month period between the correct estimates of 5 May 2020 and the incorrect estimate from 28 October 2020. As such, it was reasonably ‘unsafe’ for Mrs K to have relied on the incorrect benefit estimates in making her decision to retire. She ought to have queried the sudden significant increase, which it had no record of her doing.

- It highlighted the disclaimers in the ‘notes’ section of her estimates provided by her Employer via Pensions Online. The disclaimers clarified that final pension estimates would be based on ‘confirmed membership and pensionable pay at retirement.’

- In conclusion, Mrs K had enough information available to her to notice that the estimates she received after 5 May 2020, may be incorrect and query them. Furthermore, the estimates did not create a promise of payment and could only be confirmed at retirement. She was only entitled to her correctly calculated pension benefits under the Scheme Regulations, and it could not authorise the enhanced pension benefits quoted in the incorrect estimates.

31. On 20 May 2022, Mrs K provided NHS BSA with her chosen option regarding her 2015 Scheme benefits and it was finalised by NHS BSA.

32. On 25 May 2022, NHS BSA paid Mrs K her 2015 Scheme benefits, a lump sum of £870.51 and arrears on her retirement benefits.

33. On 26 May 2022, NHS BSA sent Mrs K a payment of £1.37 as interest for the late payment of her retirement benefits.

34. Following the complaint being referred to The Pensions Ombudsman, Mrs K and BSA made the following submissions.

Summary of Mrs K’s position

35. She requested an early retirement estimate on 5 May 2020 to determine if she could retire. Upon deciding on a different retirement date, she received three additional incorrect estimates on 28 October 2020 and 10 November 2020, based upon which she decided to retire.

36. Upon receiving the incorrect estimate of 10 November 2020, she queried the figures with her Employer’s pensions manager, as evidenced in her emails of 4 November 2021 and 11 November 2021. As her Employer was dealing with it on her behalf, she was therefore not aware she was to contact NHS BSA directly. She claims that she was told by her Employer that she would receive no less than what was illustrated in the estimates.

37. She was informed by NHS BSA, by telephone, that as her 1995 Section benefits were being investigated, she did not need to fill out her 2015 Scheme options form. Therefore, Option 1 of the options form would automatically be applied, and she would receive an annual pension and lump sum.

38. The reduction between the incorrect and overstated 1995 Section estimates she relied on, and the benefits paid to her had caused her to suffer financial loss. The monies received were used to clear debts, with the reliance on receiving the remainder of the incorrect funds. As a result, she is now left with no money or expected savings. Furthermore, she has suffered mental stress due to the mistake and had to pursue NHS BSA for resolution.

39. She is unable to return to her employment due to a Team restructure caused by her retirement. Therefore, her role no longer exists. She is now having to look at alternative employment.

40. She is unhappy with NHS BSA's IDRP Stage 2 decision. She is seeking the incorrect estimate as compensation. Additionally, she wants an apology for being called 'stupid and ignorant' in NHS BSA's IDRP Stage 2 decision, especially as she had queried the incorrect estimate.

Summary of NHS BSA's position

41. It acknowledged that there was an error with its automated system which caused all Mrs K's Employer produced benefit estimates between 28 October 2020 and 25 March 2021 to be incorrectly overstated. These incorrect estimates were inconsistent with, and almost double, her previously correct estimates.

42. As Mrs K had received consistent benefit estimates for 8 years, between 15 March 2012 and 5 May 2020, she ought to have queried the significant increase shown in her estimates from 28 October 2020 onwards. Although she queried it with her Employer, NHS BSA have no record of any queries. Due to the inconsistency and significant increase, it was 'unsafe' for her to rely on the estimates to make financial and retirement decisions.

43. The disclaimers provided with the benefit estimates stated that final benefits were paid based on confirmed membership and pensionable pay at retirement. As such the benefit estimates were not a promise of payment if the final details were inconsistent with the Scheme Regulations.

44. It was unable to confirm for certain what Mrs K was told about her 1995 Section benefits during various telephone conversations as the length of retention for recordings was six months, therefore the recordings no longer exist. However, the corresponding telephone notes did not suggest that she was advised that Option 1 would automatically be applied if she did not make a decision.

Mrs K further comments

45. Mrs K provided further comments following The Ombudsman's preliminary decision.

- She argued that NHS BSA's actions were contradictory. It contacted the Employer to communicate to her rather than contacting her directly. However, it expected her as the employee to contact them.

- She received multiple misrepresented estimates which she queried multiple times and was told were correct. These were the only things she had to rely on. She challenged the Ombudsman's statement that the estimates were not reasonably intended to be relied on, and questions what she ought to have relied on. Especially considering her Employer confirmed them to be correct.

- There is no way to prove that NHS BSA issued a retirement quotation in January 2021, as its AW8 retirement pack stated that she would not receive her final figures after she retired.

- She did not rely on the warnings in the estimates, but rather her Employer to correctly adviser her. She relied on the incorrect higher sum provided to her up until she handed in her notice, and upon querying the figures provided on multiple occasions with her Employer. Hence, she proceeded to accept the incorrect estimates as correct and this in turn caused her to retire.

- When NHS BSA sent her the correct benefits on 11 March 2021, it was a week after she retired on 5 March 2021 and led to her starting a formal investigation with NHS BSA. As such she could not reasonably be expected to return to work while the investigation was ongoing. By the time she was offered the option to return to work in June 2021 four months later, her role was no longer available. She was pre-warned by her Employer during retirement discussions that her role would be made unavailable due to the department restructure and possible job losses. This partly influenced her decision to retire.

- Had she been made aware of the incorrect information she would have reconstructed her financial commitments and left herself savings. She has suffered financial detriment as a result of retiring based on incorrect information, which illustrated her annual pension as equating to her salary income under her Employer. However, upon being correctly revised it now equates to a 50% reduction.

- She questions what she could have relied on if not the estimate, especially as it was provided to her under the instruction of her Employer's pensions manager along with reassurances. As a result of the "incompetence of both the Employer and NHS BSA" she has suffered financial detriment. She believed the payment she initially received upon retirement was a partial payment due to the ongoing investigation.

- In its Preliminary Decision, the Ombudsman acknowledged her case as being one of negligent misstatement provided by NHS BSA which amounted to serious maladministration causing injustice. As such she should be provided adequate redress.

- In initially addressing her complaint to NHS BSA, she pursued her complaint with no calls returned. This resulted in her having to chase up various individuals and avenues to get her complaint dealt with. It was one individual at the Employer who assisted her in pursing her complaint. The individual also directed her not to return the 2015 Scheme options form as she was already pursuing her complaint, as option 1 would automatically apply. It was at this point she was also informed that the mistake was the fault of NHS BSA and the Employer and that the incorrect information stemmed from the estimates generated from the automated system.

- Both the NHS BSA's IDRP decisions and the Pensions Ombudsman's decisions were biased, causing her to pursue her complaint further. She feels that in both scenarios the processes were impersonal. The whole process of pursing her complaint has had a "big impact" on both her health and wellbeing, and in turn her happy retirement has become stressful.

Ombudsman's decision

46. NHS BSA have acknowledged that there was an error with its automated system which caused all Mrs K's Employer produced benefit estimates and those generated by Pensions Online between 28 October 2020 and 25 March 2021 to be incorrectly overstated. While NHS BSA did not itself directly provide all of these estimates to Mrs K, I find that it was responsible for the provision of the incorrect benefit estimates and benefit estimates calculated using its automated system. I note that similar findings were made by the Pensions Ombudsman and approved in NHS BSA v Leeks[2] where Sales J held that: "the Pensions Ombudsman was entitled to have regard to the special position and responsibility of the Authority as scheme administrator and simply to find that the systems which the Authority had in place fell so substantially below being able to satisfy the reasonable expectations of members as to what they could look to the Authority to provide by way of important information for them as to constitute maladministration" and that "If the Authority fails to ensure that it had effective automated or other procedures in place to perform that basic function and fulfil that basic responsibility, it is clearly going to be on risk of findings of maladministration by the Pensions Ombudsman in individual cases".

47. I find that NHS BSA was responsible for all incorrect estimates provided to Mrs K whether directly by Mrs K's Employer using the NHS BSA system or via the Pensions Online system. I find that the Employer was authorised by NHS BSA to access NHS BSA's automated systems and provide these estimates. I note NHS BSA provided further incorrect estimates to Mrs K in November 2021 after she had retired.

48. NHS BSA states that Mrs K's Employer failed to communicate her queries to it and have stated that the Employer was a separate organisation. While I accept that it was a separate organisation, I find that NHS BSA liaised with the Employer (via its Pensions Team) in relation to Mrs K's benefits and that the Employer acted in part as its representative in relation to the administration of member benefits, providing benefit estimates using NHS BSA's automated systems and providing forms such as the AW8 retirement pack.

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[2] [2014] 056 PBLR (017)

49. I also note that, having received Mrs K's application for her retirement benefits, NHS BSA contacted Mrs K's Employer, rather than Mrs K, when it noticed she was still under the retirement age for the 1995 Section. It appears that NHS BSA chose to communicate with the Employer in preference to communicating directly with Mrs K and must therefore share responsibility for failing to become aware of Mrs K's queries.

50. Mrs K states that she did not receive the correct calculation provided by NHS BSA on 13 January 2021 estimating that she would receive an annual pension of £7,026.46 and a lump sum of £46,843.10 upon retirement. I have not seen any evidence that this information was provided to her by NHS BSA or her Employer and therefore accept Mrs K's statement.

51. NHS BSA states that because estimates provided prior to 28 October 2020 were correct and far lower (although even the May 2020 estimate was higher than the January 2021 estimate), Mrs K should have been aware that there was some error and should have queried the estimates. I find that she did repeatedly query the estimates. As a result of her queries, she received four estimates between 28 October and 10 November 2020. These were all incorrect but broadly consistent with each other. This would have confirmed to her that the estimates were correct even though they were materially higher than the estimate she had received in May 2020 and in previous years.

52. While estimates are only illustrations of a members possible retirement benefits and may include warnings that they are not guaranteed, retirement quotations are actuarily checked and calculated, so would usually be the document that would be expected to be guaranteed. Thus, the principal purpose of providing estimates is to enable members to have an understanding of the amount of their accrued pension benefits to assess whether they have built up sufficient pension benefits to enable them to retire. The estimates provided to Mrs K failed completely to provide her with a clear understanding of the amount of benefit she could expect in retirement.

53. A secondary purpose of the estimates may be to enable members to query any obvious errors. I say obvious errors because it is not possible for the member to carry out or check the pension calculations themselves.

54. I do not in this case consider that it is reasonable to say that Mrs K should have realised that the estimates were incorrect because of the number of incorrect estimates obtained (mutually confirming each other) and because it appears that neither the Employer nor NHS BSA realised that the estimates were incorrect despite her many queries. It would seem reasonable for her to rely on the fact that the Pensions Team and NHS BSA, who were experts and responsible for the administration of pension benefits, did not identify any errors after she had queried the estimates and after she had communicated her interest in retiring.

55. I do not find that Mrs K should have known that the estimates were incorrect or that it was unreasonable for her to rely on them in making her decision to retire.

56. However, as stated by the Adjudicator, the provision of incorrect estimates does not automatically entitle Mrs K to the incorrect amount. Her benefits are still required to be calculated according to the Scheme Regulations.

Negligent misrepresentation

57. For a claim for compensation for negligent misstatement to be successful, i.e. to compensate Mrs K for loss she suffered in reliance on incorrect information, Mrs K must have reasonably relied on the misstatement, and the claimed loss must have been as a direct result of the misstatement. NHS BSA must also have had a duty of care to protect Mrs K from the type of loss suffered by taking reasonable care to ensure the information provided was correct and it must have been reasonable for it to expect her to rely on the information for the purpose for which she did rely on it.

Was there a representation reasonably intended to be relied on?

58. The incorrect estimates that Mrs K received from October 2020 were representations; however they were not unequivocal. They included estimates that final benefits were paid based on confirmed membership and pensionable pay at retirement and were not a promise of payment if the final details were inconsistent with the Scheme Regulations. Effectively, they were not reasonably intended to be relied on. Estimates are issued annually and can be issued in this case through the Pensions Online system without being checked. While it was inevitable that Mrs K would need to rely on them to get an understanding of her expected retirement benefits, the warnings exclude any liability for decisions made in reliance on these estimates.

59. In contrast, I find that the retirement quotation issued in January 2021 was issued for the purpose of facilitating her retirement decision. The purpose of a retirement quotation is specifically to inform the member as to what her actual pension benefits will be and should be checked more carefully than annual or automated benefit estimates. It is reasonably intended or expected to be relied on for the purpose of a retirement decision. The January 2021 quotation was correct. Mrs K states that she did not receive it. This is regrettable but the fact that the correct quotation was not received by her does not change the status of the estimates or make it reasonable that NHS BSA should have expected her to rely on the estimates.

60. For the reasons explained above, all members must be issued a retirement quotation that is always sent prior to retirement. Therefore, NHS BSA would have created one and even if she did not receive it, on the balance of probabilities, I find that it was issued.

Was it reasonable for Mrs K to rely on the representations?

61. I find that when Mrs K received the estimate on 28 October 2020, she should have been aware that something was wrong given that the figures had almost doubled between 5 May 2020 and 28 October 2020. Between 15 March 2012 and 5 May 2020, NHS BSA issued several estimates which showed consistent, if modest, growth. However, I find that she did raise queries with the Pensions Team of her

Employer, and her queries may also have been addressed by the further incorrect estimates she received on 10 November 2020.

62. Overall, I find that Mrs K acted reasonably in querying the estimates she received, and it was reasonable for her to raise her queries with the Pensions Team of her Employer that supplied her with forms and estimates on behalf of the Scheme.

63. Regardless of her reliance on the Employer, the warnings in the estimates made it clear that they were not intended to be relied on for an actual retirement decision. Rather the estimates were to be used as a guide to understanding her benefits. and having regard to the fact that NHS BSA issued a correct retirement quotation in January 2021, I do not find that NHS BSA would reasonably have expected her to decide to retire on the basis of the estimates rather than the retirement quotation.

64. NHS BSA also sent details of Mrs K's correct benefits to her on 11 March 2021, almost a week after her retirement date of 5 March 2021. In the following weeks, there were further exchanges between Mrs K and NHS BSA eventually leading to NHS BSA inviting Mrs K to return to work without penalty in June 2021 and to Mrs K starting an IDRP complaint. However, from March 2021, insofar as Mrs K's decision to retire was not irreversible, there could be no reasonable reliance by Mrs K on the incorrect estimates as she was aware of the overstated figures.

65. Mrs K says that at the point she was informed of her correct pension her role was no longer available because of a team restructure. On the balance of probabilities, I find that it is likely that she would have been able to return to her previous role had she requested it in March 2021 when the correct details of her pension were provided to her and shortly after her retirement. This would have been a likely outcome shortly after her retirement, and notwithstanding the anticipated restructure, given the role of her Employer in providing incorrect estimates to her and, if she did not receive the retirement quotation in January, in failing to pass on that retirement quotation.

66. While I acknowledge that she was a week into her retirement when she received the correct information and was pursing her complaint with NHS BSA, there was a period between March and June where she could have sought to mitigate her potential losses. Although I accept her options were limited, she still had time to explore a potential return to employment with NHS BSA prior to its offer in June 2021. I note that when NHS BSA sent her the correct benefits on 11 March 2021, her response was to start a formal investigation with NHS BSA and I do not agree that it would have been unreasonable for her to seek to return to work while the investigation was ongoing. I accept that by the time she was offered the option to return to work in June 2021, her role was no longer available. Mrs K has said that she was pre-warned by her Employer during retirement discussions that her role would be made unavailable due to the department restructure and possible job losses and that this partly influenced her decision to retire. However, I find that knowledge of the expected restructure would both have provided Mrs K with a separate reason to retire and a reason to inquire more urgently about returning to work in March 2021 once she was aware of her correct benefits if the amounts provided in the incorrect benefit

estimates had been critical to her decision. As Mrs K did not seek reinstatement promptly after being made aware of her correct benefits, I find that she would have retired on 5 March 2021 and not sought to remain in work had the benefit estimates provided in October and November 2020 been correct.

67. Considering that she did not seek to return to work and considering the department restructure and possible job losses, I find that she would have retired and been subject to the same reductions even if the estimates produced between 28 October 2020 and March 2021 had been correct.

Financial detriment

68. The final consideration is whether, as a result of her reliance she suffered financial loss.

69. Regarding Mrs K's financial loss, the debts Mrs K listed as evidence of financial loss were pre-existing debts that existed before the misinformation. Therefore, as there was a pre-existing duty to pay those debts this is not a financial loss. I acknowledge that she was given limited time to mitigate the shortfall; however, the pre-existing debts were not caused as a direct result flowing from NHS BSA's mistake and were not incurred in reliance on the incorrect benefit estimates provided in October and November 2020. I also note that Mrs K was notified of her correct retirement benefits at the latest on 11 March 2021 and received her first payment on 16 March 2021. Any payment made after 11 March 2021, despite her assumption, could not be in reasonable reliance on the previous incorrect benefit estimates as she was by then on notice of an issue.

Conclusion on negligent misrepresentation

70. I find that NHS BSA was responsible for the provision of incorrect benefit estimates to Mrs K directly or by her Employer or via the Pensions Online system in October and November 2020. As such, I find that Mrs K acted reasonably in querying these.

71. However, they were not reasonably to be relied on for the purpose of a final retirement decision having regard to numerous Factors. Namely, the warnings issued in the benefit estimates and the nature of such benefit estimates. Additionally, considering the process of providing checked retirement quotations further to a retirement request and the fact that a retirement quotation was issued (whether or not received). I find that NHS BSA was not reasonably to have expected the benefit estimates to be relied on for a final retirement decision and Mrs K could not reasonably rely on them for that purpose.

72. I also find that Mrs K did not suffer financial loss in reliance on the incorrect benefit estimates in paying off pre-existing debts with the initial payments received particularly as she was on notice of the error by no later than 11 March 2021. On the balance of probabilities, I do not find that Mrs K had irreversibly retired from her role in reliance on the incorrect benefit estimates prior to 11 March 2021 even though she

had retired with effect from 5 March 2021 as I find that she would have been able to secure and did not seek reinstatement immediately after 11 March 2021.

Compensation for maladministration

73. Awards for non-financial injustice are intended to provide some modest recognition that the individual has suffered distress and inconvenience. They are not intended to be corrective.

74. While I do not find that the legal requirements for a claim for compensation for loss incurred in reliance on a negligent misstatement are met in this case, I consider that there was serious maladministration in this case that did cause Mrs K injustice.

75. NHS BSA allowed Mrs K to be issued with no fewer than four incorrect benefit estimates. Mrs K queried these and was not able to obtain a correct estimate. NHS BSA was responsible for the automated system used by the Employer and Pensions Online to issue the incorrect estimates.

76. As held by Sales J in NHS BSA v Leeks in 2014, NHS BSA had a special position and responsibility as scheme administrator and the systems which NHS BSA had in place "fell so substantially below being able to satisfy the reasonable expectations of members as to what they could look to [NHS BSA] to provide by way of important information for them as to constitute maladministration". NHS BSA was required to ensure that it had effective automated or other procedures in place to perform the basic function and fulfil that basic responsibility of issuing reliable and correct benefit estimates to members or enabling employers or the Pensions Online system to issue them. It failed and it did not correct the system. It issued a further incorrect benefit estimate to Mrs K as late as November 2021, after the discrepancies between the estimates and Mrs K's actual benefit entitlements had been discovered. In other words, it did not take adequate remedial action when aware of the issue.

77. The distress and inconvenience caused to Mrs K was serious. She was led to expect a much higher level of benefit (nearly double), and this was confirmed to her on several occasions after her queries. The incorrect benefit estimates undoubtedly led to her decision to retire as she applied to retire after having received four estimates in October and November 2020, whether or not they could or should have been relied on for that decision.

78. I do not find that there was any rudeness by NHS BSA in its IDRP Stage 2 decision. It was appropriate for NHS BSA to explore if Mrs K had reasonable reliance on the incorrect estimates provided.

79. Therefore, I uphold Mrs K's complaint in part and find that NHS BSA was responsible for maladministration that caused Mrs K serious distress and inconvenience.

Directions

80. Within 28 days of the date of the Decision, NHS BSA shall pay Mrs K £1,000 in recognition of the serious distress and inconvenience caused to her.

Camilla Barry

Deputy Pensions Ombudsman
25 November 2025