

Ombudsman's Determination

Applicant	Mr S
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. Mr S' complaint against NHS BSA is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, NHS BSA should pay Mr S £2,000 for the significant distress and inconvenience caused by the incorrect information it provided.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S has complained that he was misinformed on when he would be able to take the entirety of his pension benefits on an unreduced basis.

Background information, including submissions from the parties

4. Mr S joined the Scheme in March 1977.
5. In April 1987, Mr S was awarded 'special class status' for his employment as a nurse. Members in this group were allowed to retire at age 55 with unreduced benefits.
6. In July 2007, Mr S was made redundant and left NHS Service.
7. In September 2009, NHS BSA sent Mr S a benefit statement on the basis of pension benefits being paid at age 55. No actuarial reduction was applied on the benefits concerning Mr S' Scheme membership before 17 May 1990.
8. On 21 March 2012, Mr S returned to NHS Service in a lower graded post. He says his intention at the time was to retire on his 55th birthday in March 2014.
9. In September 2013, Mr S contacted NHS BSA saying the following:

"I am aware that I am able to collect my NHS pension on 20th March 2014. Please will you send me an estimate of pension benefits due. Also, please will

you advise me what are the options to collect part of the pension (special class status) and delay [sic] other part of pension until aged 60.”

10. On 18 September 2013, in response to Mr S’ request, NHS BSA sent him a benefit estimate. The covering letter said:

“Please be advised that your preserved benefits are payable at age 60 and will be reduced should you claim them any earlier.”

11. On 26 September 2013, Mr S telephoned NHS BSA to query the estimate. He says he was told that as he had been made redundant, his special class status benefits would not be reduced should he wish to take benefits at age 55.

12. In response to this call, NHS BSA issued a revised estimate dated 27 September 2013. The covering letter said:

“The previous estimate was incorrect. As you were a member of the Special Classes [sic] and you left your employment on redundancy grounds then you are eligible to retire at age 55 with no reductions. I apologise for the previous estimate which was calculated incorrectly.”

13. The attached statement cited the following benefits as payable from March 2014: -

- Annual pension: £28,104.12
- Lump sum: £84,312.38

14. On 30 September 2013, Mr S says he again sought clarification of the level of benefits he would receive in a further telephone call to NHS BSA. He says it was confirmed that he would be entitled to a full pension as a special class member, should he retire on 20 March 2014 at age 55. NHS BSA has not been able to provide the telephone note for this call.

15. On 4 December 2013, Mr S submitted an AW8P form to apply for his benefits. In the covering letter supplied with his application, Mr S said:

“I have received a quotation from your department dated 27th September confirming my entitlement to this pension without any reductions and it is this amount for which I now claim.

My employer is currently considering re-employing me on a part time basis post-retirement. If this is considered appropriate and acceptable, then I intend to return on or around the 20th April 2014.”

16. On 18 December 2013, NHS BSA sent Mr S a letter acknowledging receipt of his application. A further statement was provided which, but for a discrepancy of two pence, confirmed the figures provided in the 27 September 2013 statement.

17. On 12 March 2014, NHS BSA sent Mr S a further letter, this time quoting lower pension and lump sum figures. Mr S says he received this letter on 19 March 2014,

which was a day before his intended retirement, which he did not feel allowed him sufficient time to act on this information. The letter said the following revised amounts were payable from 20 March 2014: -

- Annual pension: £25,572.89
- Lump sum: £79,107.29

18. On 20 March 2014, Mr S' pension benefits were brought into payment as per the 12 March 2014 letter. Mr S subsequently telephoned NHS BSA about the pension figures quoted in this letter. He was told that the Award team would respond directly to him.
19. On 19 March 2014, NHS BSA sent Mr S a letter saying that the first calculation had not factored in the rules on actuarial reduction and that unreduced benefits had been quoted.
20. On 26 March 2014, Mr S complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
21. NHS BSA provided its stage one IDRP response on 28 May 2014. This is summarised below: -
 - NHS BSA acknowledged that the estimate provided in September 2013 had contained inaccurate information.
 - Mr S' application had been processed without taking into account his male nurse status and a reduction for the pension he had accrued before 17 May 1990.
 - NHS BSA offered Mr S compensation of £100 for the errors it had caused.
22. In a letter of 30 September 2014, Mr S' representative (**the representative**) made a series of points to appeal NHS BSA's decision. This said the following:
 - Mr S had a legitimate claim that NHS BSA owed him a duty of care.
 - NHS BSA had made inaccurate statements to Mr S upon which he relied, and as a result of which, he suffered a loss. Mr S may have a claim for negligent misstatement.
 - Mr S was not informed of the mistake in a timely manner meaning that he was unable to change his position prior to retirement and mitigate his loss.
23. On 5 December 2014, NHS BSA responded under stage two of its IDRP. It accepted responsibility for the incorrect information which had been provided, but said it was not reasonable for Mr S to have relied on that information given that Mr S had previously provided evidence that he knew and understood the Scheme rules concerning male nurses and special class status.
24. The representative subsequently brought the complaint to this Office. Amongst other comments, it was highlighted that Mr S had not intended to receive his pre May 1990

benefits at a reduced rate and would have requested for these to come into payment from age 60 had he known the correct position. Due to the error, Mr S was not given the option to receive his pre May 1990 benefits from age 60.

25. On 18 January 2017, in response to questions asked of Mr S by the Adjudicator in the course of her investigation, the representative said the following: -
- Had Mr S been provided with accurate information relating to his pension entitlement in a consistent and timely manner, Mr S would have sought to continue with his employment to maintain his income.
 - Had Mr S received the correct information, he would have delayed part of his retirement.
 - Due to Mr S' reliance on the incorrect information provided to him, he will need to continue working as he will not receive an increase in his pension at the age of 60 in relation to his pre May 1990 benefits. Furthermore, Mr S will suffer an estimated annual loss of £2,531.23 from March 2019, and received a lower lump sum in March 2014.
26. In relation to further questions asked by the Adjudicator, the representative clarified that although Mr S had always intended to return to work after his retirement, this was on the basis of significantly reduced hours. However, when Mr S became aware of his reduced pension in March 2014, he was unable to renegotiate sufficient hours to make up the financial shortfall in income as the remaining hours of his post were disestablished and added to another role.
27. The representative also said that as Mr S is currently on a zero hour contract with the Care Quality Commission (**CQC**), there is no guaranteed income. His income has reduced in the financial year of 2016/17 due to the CQC's financial constraints. The representative also said that the shortfall in pension income is having a significant negative impact on both Mr S and his wife.

Adjudicator's Opinion

28. Mr S' complaint was considered by one of our Adjudicators who concluded that NHS BSA should make an award of £1,000 to him for its significant maladministration. The Adjudicator's findings are summarised briefly below: -
- Mr S had initially understood that he would only be able to take part of his benefits at age 55 on an unreduced basis, which is demonstrated by his query to NHS BSA in 2013.
 - However, Mr S queried the benefit statement he received which did not reflect this. Significantly, on 27 September 2013, NHS BSA sent Mr S a revised statement with a covering letter which addressed Mr S' specific query. This suggested that the matter had been reconsidered and the correct position reached. It was reasonable for Mr S to have relied on this information.

- This was compounded by NHS BSA sending Mr S a further statement in December 2013, following his application for benefits, confirming the erroneous information. This was the third occasion on which NHS BSA sent Mr S incorrect written information concerning his benefits.
 - On 12 March 2014, NHS BSA issued a statement to Mr S showing his correct benefit entitlement, which he received a day before his benefits came into payment. This did not provide him with sufficient notice to reconsider his application for benefits.
 - Mr S' query in early September 2013 indicated that he was not seeking a reduced pension at age 55 for part of his benefits. It is highly probable that Mr S would have made a different decision had he received the correct information.
 - With regard to whether Mr S has suffered a loss due to the inaccurate information, he has needed to return to work to make up the shortfall in his income compared with that which he expected to receive. He has carried out alternative employment on a zero hour contract basis. Although, when applying for benefits, Mr S had planned to return to his current employment after retirement, but on a reduced hours basis.
 - Whilst there is a difference between these two positions and at face value there was a loss, a clear financial loss was not apparent as there were several variables. Specifically, it was not certain that Mr S would have been able to carry out the additional hours in his usual employment as between the time he took benefits and when he reached age 60. This was because an employer's stance can change at any given time.
 - Additionally, Mr S has mitigated his loss to some extent in managing to find alternative employment. Although Mr S had received a lower pension for the benefits which were reduced, he has had the benefit of receiving these sooner.
29. NHS BSA accepted the Adjudicator's Opinion. Mr S did not accept the Opinion; he said that NHS BSA should provide estimates on what pension he would have received had he deferred his pre May 1990 benefits until age 60. Also, the Adjudicator had said that Mr S had the benefit of receiving these benefits sooner, but she had not identified what the value of the accelerated receipt of the benefit should be.
30. In addition, Mr S provided a spreadsheet with calculations concerning his estimated loss. The figures within this were estimated on the basis that he claimed part of his benefits at age 60, and lived until age 85. He asked that NHS BSA consider this. The Adjudicator forwarded this to NHS BSA.
31. NHS BSA's response was that Mr S had not suffered any financial loss and instead, suffered a loss of expectation. In reference to the loss figures which Mr S had provided, it said that the Office for National Statistics estimated that a person born in 1959 had a life expectancy at birth of age 68. It considered the original offer of £1,000 for the non-financial injustice appropriate.

32. The Adjudicator informed the representative that whilst Mr S would have received higher, unreduced, benefits at age 60, quantifying the loss from this point onwards was not possible. She said that her Opinion remained appropriate.
33. The representative did not agree that quantifying the loss was not possible. He said that if such an approach was taken by the courts and tribunals, no compensation could be awarded in, for example, negligence, personal injury and employment claims. The fact that an element of speculation was involved in the loss exercise was no reason to not have regard to the evidence. Furthermore, should NHS BSA wish to contend that any benefit paid to Mr S from age 60 would be limited, it would need to adduce the relevant evidence of it.
34. The complaint was subsequently passed to me to consider. I agree with the Adjudicator's Opinion summarised above, in that part of this complaint should be upheld; I will therefore only respond to the key points made by the representative and NHS BSA for completeness.

Ombudsman's decision

35. It was reasonable for Mr S to rely upon the September 2013 benefit statement. The assertions made within this were specific to Mr S' circumstances and followed a query made by Mr S concerning a previous, erroneous statement. As such, there was a higher expectation that NHS BSA had reviewed the matter thoroughly and was confirming the correct stance.
36. My next consideration is whether the incorrect information caused Mr S financial loss. Mr S provided a loss calculation showing the pension benefits he is currently receiving, compared with what he would have received had he deferred his pre May 1990 benefits until age 60. However, it must be taken into account that, by taking benefits at age 55, they will be in payment over a longer period, but Mr S' overall entitlement broadly remains the same. I do not find a financial loss in this respect.
37. Mr S has sought to mitigate the shortfall in his income in terms of the pension he was quoted when he applied for benefits and that which he was actually paid. He had intended to return to work on a reduced hours' basis after retiring. After realising that his pension would be adjusted, Mr S was unsuccessful in negotiating sufficient hours in his normal employment to make up the shortfall. He has taken up alternative employment but this has not secured a guaranteed income.
38. Yet, these are not grounds for suggesting that Mr S has suffered a financial loss. Although he had difficulties in returning to a similar employment position to that which he would have maintained had he been appropriately informed and deferred his benefits, it is uncertain whether the hours Mr S sought in his normal employment would have remained available.

PO-10355

39. Furthermore, although Mr S was not able to remedy the shortfall in his income through the particular employment he has undertaken, it does not automatically follow that this will remain the case.
40. The factors above demonstrate that Mr S has not suffered a definable financial loss due to the decisions he made on the basis of the incorrect information. Therefore, a recommendation to this effect would not be appropriate.
41. Turning to non-financial loss, I am persuaded that the distress and inconvenience which Mr S has suffered as a result of NHS BSA's error is significant so a substantial award is appropriate. In this case, I have increased the award proposed by the Adjudicator to £2,000.
42. Therefore, Mr S' complaint is partly upheld.

Directions

43. Within 21 days of the date of this determination, NHS BSA shall pay Mr S £2,000 for the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
4 July 2017