

## Ombudsman's Determination

Applicant	Mrs N
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHS Business Authority ( <b>NHSBSA</b> ) The Gables Surgery ( <b>the Surgery</b> )

## Outcome

1. I do not uphold Mrs N's complaint and no further action is required by NHSBSA and The Surgery.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs N is complaining that NHSBSA provided her with an incorrect benefit quotation. She says that she relied on the incorrect figures to retire at age 60. She contends that she should be compensated for the loss of her pension benefits.

## Background information, including submissions from the parties

4. Mrs N worked for the NHS and was a member of the Scheme. She was employed by the Surgery in August 2014.
5. On 10 October 2014, Mrs N commenced sickness absence. Her sickness was attributed to mouth infection and back pain.
6. On 26 November 2014, Mrs N called NHSBSA to request a quotation of her pension benefits.
7. On 2 December 2014, NHSBSA sent Mrs N an incorrect benefit quotation at age 60. The covering letter stated :  
  
    "...this statement is an estimated quotation only".
8. The incorrect illustration was based on pensionable pay of £63,387.84 and showed the following:-
  - A full pension of £6,918.39 per annum and a cash sum of £20,755.18.

9. On 8 December 2014, Mrs N called NHSBA to give permission to speak to her husband about her pension matters, however NHSBSA said that there was no discussion during the call about either the incorrect pay figure or incorrect hours.
10. On 10 December 2014, Mr N called NHSBSA again. However, there is no evidence that he questioned the pensionable pay figure; NHSBSA said it gave advice on the estimated figures and the process of sending in the pension leaver's form.
11. Around 10 December 2014, Mrs N handed in her resignation letter to the Surgery.
12. On 14 December 2014, the Surgery wrote to Mrs N saying that it would send her pay slip and completed pension leaver's form.
13. On 9 February 2015, Mrs N received a letter from NHSBSA stating that the benefits quoted to her on 2 December 2014 were incorrect. It said that the correct figures were based on the correct pensionable pay earnings of £14,641.64 and were as follows:
  - A full pension of £1,987.21 per annum and cash sum of £5,961.66.
14. NHSBSA apologised to Mrs N for any inconvenience caused.
15. On 10 February 2015, NHSBSA sent Mrs N a letter informing her about the payment of her Scheme benefits.
16. On 16 February 2015, Mrs N made a complaint to NHSBSA with regard to her being wrongly advised by it. She invoked the internal dispute resolution procedure (IDRP).
17. On 18 February 2015, Mrs N received a letter from NHSBSA acknowledging her complaint and saying it will respond to her within forty working days.
18. On 15 April 2015, Mrs N received a response under IDRP stage 1 that said:

“ The pension benefit... produced in December 2014 was significantly overstated...your employer had not provided their annual updates of your membership and pay since 31 March 2012 as I would have expected...The error made in the estimation of your pensionable pay is most regrettable...I therefore offer my sincere apologies...I have considered if financial redress is appropriate...Considering the significant difference between the pay used in our calculations and your actual rate of pay, it would not be unreasonable to expect that you would have noticed this anomaly...I consider that you had the opportunity to query the statements at the time you received them and thus mitigate the situation”.
19. On 4 May 2015, Mrs N challenged NHSBSA's decision by saying that she thought the pay figure of £63,387.84 was her total pay earned while working for NHSBSA for twenty years.

20. On 15 July 2015, NHSBSA responded to Mrs N explaining that the error occurred as a result of the Surgery providing incorrect amount of hours that she had worked. It said that:

“It is possible that your employer may not initially have accounted for any contracted hours that were not worked but would still count toward your scheme membership, for example, if any periods of paid sick leave occurred during the pay periods in question...Whilst I accept that you may be unfamiliar with the pension benefit calculations and their respective pay and membership components...I would add that the choice statement produced for you in August 2010 was based on an estimated whole time equivalent pay of £14,064.00 thus I believe you had a further opportunity to identify the anomaly in respect of your pensionable pay...I also believe that responsibility for the overstated estimate and the subsequent decision you made to retire do not rest solely with NHS Pensions.”

21. On 20 August 2015, Mrs N appealed against the IDRP stage 1 response and invoked IDRP stage 2.
22. On 26 August 2015, NHSBSA sent Mrs N a letter acknowledging her appeal.
23. On 23 September 2015, Mrs N received a response under IDRP stage 2 saying:

“Although NHS Pensions regrets that you were issued with an inaccurate estimate this was based on data supplied by your employer. Further you should have been aware that your full-time equivalent earnings were nowhere [sic] near the £63,387.84 figure quoted on the estimate...Although you made one telephone call about the estimate to our member Helpline on 10 December 2014 and the recording is no longer available and the brief written record does not detail what questions were asked or what answers were given.”

24. On 7 October 2015, Mrs N brought the complaint to this office.
25. On 2 November 2015, this office received a formal response from NHSBSA that said:
- “...NHS Pensions maintains that the estimate provided to Mrs N was incorrect and for this reason her complaint is upheld in part. However, as explained in the IDR procedure Stage 2 response dated 23 September 2015, if Mr or Mrs N had queried either the pay or hours on the estimate then NHS Pensions would have re-checked the information provided by the employer”.
26. On 13 January 2017 I had a telephone conversation with Mrs N. I explained that she is not entitled to receive the higher pension benefits and in any event, she is only entitled to the benefits calculated in accordance with the Scheme rules. Mrs N agreed with me and she said she should be awarded some form of compensation for NHSBSA's error. I said that I will look in to this matter for her.

27. On 30 January 2017, this office was provided with additional information by NHSBSA. It provided the NHS Pension Choice form that would have been sent to Mrs N by the Surgery on 5 August 2010. It shows Mrs N's pensionable pay figure of £14,064 and service of 7 years 39 days. It is a personalised comparison statement of the benefits Mrs N could have received from the NHS Pension Scheme 1995 and 2008 Section.
28. On 16 February 2017, this office received a formal response from the Surgery that said:

"Leading up to the period Mrs N handed in her notice, the practice partners and myself took some legal advice/action to start a procedure due to Mrs N [sic] long term sickness absence and the varying reasons for her sickness... In regards to the incorrect pensions estimate, I was not aware that Mrs N had requested this ...When I discussed this with the pensions agency they confirmed that they had updated all the figures from the leavers form and Mrs N had been paid the correct amount...I am aware that Mrs N had previous estimates a few years before so would have thought that she would have understood her previous estimate and that a new estimate with an annual income of £63,387.84 was incorrect...I disagree that Mrs N handed in her notice because of her estimate information as she had verbally informed various staff members that she was leaving/not working over the age of 60."

### **Adjudicator's Opinion**

29. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA and The Surgery. The Adjudicator's findings are summarised briefly below.
- NHSBSA has agreed that it provided incorrect retirement figures to Mrs N. So there is no dispute that a problem has occurred. NHSBSA provided Mrs N with an estimated benefit quotation which overstated the value of her benefits and the Adjudicator was satisfied that this failure amounts to maladministration on the part of NHSBSA. It acknowledged this and has apologised for the error.
  - Having carefully considered all the available evidence the Adjudicator was satisfied that Mrs N has not suffered any direct financial loss as a result of NHSBSA's maladministration. As such, any loss Mrs N has suffered is treated as non-financial.
  - Where maladministration is found to have caused a non-financial loss, as in this case, the Pensions Ombudsman can direct the payment of compensation. In reaching a decision as to the appropriate level of award, the Adjudicator took into account the fact that Mrs N's period of distress was limited to a single benefit quotation and could have been avoided altogether if Mrs N had realised the wrong pay figure and questioned it with NHSBSA. Also in its

cover letter, NHSBSA informed Mrs N that the statement is an estimated quotation only.

- So the Adjudicator's view is that the complaint cannot be upheld. The Adjudicator considered the key item of correspondence provided by NHSBSA that would have been sent to Mrs N on 5 August 2010. It shows Mrs N's correct pensionable pay figure used to work out her pension and lump sum in both sections is £14,064. The Adjudicator therefore thought that Mrs N ought to have realised that her pay figure was incorrect in her estimated benefit quotation. The Adjudicator has seen no evidence of Mrs N questioning the pay figure.
- The Adjudicator has also considered whether Mrs N relied on the incorrect figures to make a decision to retire at age 60. The Adjudicator was not persuaded that she did as the Surgery said Mrs N's plan was to retire early anyway.

30. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs N for completeness.
31. Mrs N did not provide any new material evidence. Mrs N maintains that she could not have queried the information with NHSBSA as she did not have it in the first place. Mrs N contends that NHSBSA's apology does not help her as its error should not have happened. She refuses to take the responsibility for not realising NHSBSA's error and puts the onus entirely on NHSBSA.

### **Ombudsman's decision**

32. As stated by the Adjudicator Mrs N received previous correspondence from NHSBSA showing her correct pensionable figure. I find that Mrs N has previously received sufficient information to enable her to have realised the error with the pensionable pay figure.
33. Mrs N ought to have queried her pensionable pay figure as it was clearly incorrect. Had she done so, she would have known from the outset the correct position regarding her pension benefits.
34. I agree that NHSBSA should have realised the error earlier, however, it has apologised to Mrs N and subsequently sent a correct benefit quotation to her. As a direct consequence of the error Mrs N has suffered distress and inconvenience rather than actual financial loss. However, for the reasons given by the Adjudicator in her Opinion, I do not think that an award for distress and inconvenience is warranted in this case.

**PO-10556**

35. Therefore, I do not uphold Mrs N's complaint.

**Anthony Arter**

Pensions Ombudsman

6 June 2017