

## Ombudsman's Determination

Applicant	Dr E
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. I do not uphold Dr E's complaint and no further action is required by NHS BSA.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Dr E's complaint against NHS BSA is about the difference between the figures quoted to her on 15 June 2011 (**the June 2011 quotation**) for early retirement, and the figures put into payment on 6 February 2013, which were much lower.
4. Dr E says she made significant and irrevocable financial and lifestyle decisions in reliance on the figures provided in the June 2011 quotation, which she took in good faith as being correct.

## Background information, including submissions from the parties

5. On 15 June 2011, NHS BSA provided Dr E with an early retirement quotation for retirement on 5 February 2013. This quoted a lump sum of £47,719.13 with an annual pension of £14,379.82. The June 2011 quotation was based on total service of 26 years 164 days, which included 14 years 338 days "transferred from a former Scheme".
6. Dr E made three calls to NHS BSA, one on 16 July 2012 and two on 12 November 2012. Dr E says that the figures were quoted to her again and that she was assured the figures were correct. Only brief notes of the calls are available, which record the calls concerning the process of applying for the payment of benefits, and death benefits. NHS BSA say that where figures were given or confirmed these would have been taken from the latest estimate on file, which was the June 2011 quotation.
7. On 14 November 2012, NHS BSA received Dr E's application for retirement on 6 February 2013. On 17 January 2013, NHS BSA issued final benefit details to Dr E,

which she received on 25 January 2013. The final figures were a lump sum of £37,672.10 and an annual pension of £11,572.19 based on her total service of 18 years 360 days. Her benefits were put into payment with effect from 6 February 2013.

8. Dr E raised a complaint due to the reduction in the benefits put into payment compared to the benefits quoted. Her complaint was reviewed under the two stage Internal Disputes Resolution Procedure (**IDRP**). At both stages NHS BSA accepted that the June 2011 quotation was incorrect. The quotation double counted service transferred in from two previous pensions arrangements to 14 years 338 days, rather than 7 years 169 days. At stage two, NHS BSA apologised again for the error and offered Dr E £150 for the distress and inconvenience caused.
9. NHS BSA has said that it was not reasonable for Dr E to have relied upon the incorrect quotation as she had received information previously which should have alerted her to the error. NHS BSA provided copies of documents previously sent to Dr E which confirmed the amount of service that she had been awarded as a result of her transfers in, her total service after becoming a deferred member and estimates which provided figures more in line with those put into payment. The previous information supplied is listed below:-
  - 23 February 1995 - letter showing 264 days service awarded in respect of a transfer in from Legal and General.
  - 19 May 1995 - letter showing 6 years 270 days service awarded for a transfer in from Haringey. This letter includes a hand written annotation stating that the total transferred in service amounts to 7 years 169 days.
  - 28 February 2002 - quotation showing an estimated projection of retirement benefits to 5 February 2018 assuming that Dr E continued to accrue service up to the same date, which is Dr E's normal retirement date. This details a lump sum of £58,470.21 and annual pension of £19,490.07 based on pensionable service of 36 years 54 days (including four doubled years due to Mental Health Officer membership). This letter also confirmed the transferred in service of 7 years 169 days.
  - 4 April 2008 - quotation providing an estimate of benefits and an early retirement quotation. The letter states that Dr E left the Scheme on 31 August 2006, and holds two periods of service, with a total service of 18 years 360 days. This shows, for early retirement on 6 February 2008, a lump sum of £26,389.56 and annual pension of £6,998.06, an explanation of the calculation is also shown.
10. Dr E's solicitors have said that it is reasonable that she relied upon the June 2011 quotation and the information provided in the telephone calls in July and November 2012. These were given seventeen months apart allowing ample time for reassessment of the figures. In addition, her solicitors say that NHS BSA would have been aware, by the nature of the quotation and Dr E's age, that the quotation would

likely be relied upon for retirement planning and a finding that reliance was not reasonable would be unjust.

11. Dr E has also supplied evidence to show her detrimental reliance and mitigation of loss. Including submissions from her accountant, bank statements showing financial support from friends, amendments made to her mortgage to reduce payments and job applications.
12. Prior to Dr E bringing her complaint to this office and after the completion of the IDRP Dr E contacted The Pensions Advisory Service (**TPAS**), an independent organisation which provides guidance on pensions and assists with pension complaints. In its report TPAS incorrectly referred to Dr E as a nurse. It appears that this was in relation to her loss of contracts as an expert witness following her retirement, which were misinterpreted as contracts as a bank nurse. TPAS apologised for this error, which did not change its view on her complaint. TPAS explained that it did not feel it could assist with Dr E's complaint and directed her to this office.

## **Adjudicator's Opinion**

13. Dr E's complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA. The Adjudicator's findings are summarised briefly below:-
  - There is no dispute that a problem has occurred and that Dr E has suffered a loss of expectation. However, the Adjudicator was satisfied that Dr E is currently receiving her correct entitlement under the Scheme Regulations.
  - The Adjudicator considered whether it was reasonable for Dr E to have relied upon NHS BSA's negligent misstatement and if reliance upon it was to her detriment. In doing this, she considered the information available to Dr E at the time to establish whether it would have been reasonable for her to have noticed the error.
  - In Dr E's case the error was caused by double counting transferred in service. NHS BSA have provided a number of letters issued to Dr E between 1995 and 2008 that show Dr E's transferred in service correctly. From the evidence available it is only the June 2011 quotation that details incorrect transferred in service.
  - In addition to this, Dr E was a deferred member and had been since 31 August 2006. She had ceased accruing service and had received documentation quoting her total service as 18 years 360 days. The incorrect June 2011 quotation was based on a total of 26 years 164 days. The Adjudicator considered that it was reasonable that Dr E should have been aware of this error, especially as the transferred in service is shown separately on the quotation as 14 years 338 days when all previous documentation had shown 7 years 169 days.

- The Adjudicator said that the June 2011 quotation and the information given in the telephone call of November 2012 were 17 months apart, allowing ample time for recalculation of the figures. However, it would not be expected that NHS BSA would recalculate an early retirement quotation, until putting it into payment, unless the member requested a recalculation for retirement on a different date, or questioned the accuracy of the figures. There is no evidence to suggest that Dr E requested another quotation, or queried the amount of service shown in the estimate and the figures quoted.
  - A scheme is not bound to follow incorrect information and a member is only entitled to receive the benefits provided for under the scheme rules. The Adjudicator found that there was enough other information available for Dr E to have been aware that there was an error, and that it was not reasonable for Dr E to have relied upon the June 2011 quotation.
  - The Adjudicator realised that this was a disappointment to Dr E, but said that without it being found that there was reliance on the incorrect quote, detrimental reliance cannot be considered.
  - Nonetheless, the Adjudicator did believe that Dr E should receive redress from NHS BSA for the non-financial loss she has suffered. The incorrect figures quoted are substantially higher than those to which Dr E is entitled. The loss of this expectation would have led to significant distress and inconvenience for Dr E. NHS BSA offered Dr E £150, however the Adjudicator thought that it was reasonable to increase this to £500 in this case.
14. Dr E did not accept the Adjudicator's Opinion and NHS BSA raised questions over the award for significant distress and inconvenience. The complaint was passed to me to consider. Dr E and NHS BSA provided their further comments which are summarised below:-
- Dr E says that her work as an expert witness required her to be methodical and accurate at all times, and she expected the same of NHS BSA when preparing a quotation for her retirement. Especially as it was clear from her age that she would likely rely upon that quotation. Therefore she feels it was reasonable for her to have relied upon the quotation and the subsequent telephone calls as correct and did so in good faith.
  - Dr E has commented that the Adjudicator requested information to show change of position but did not consider this after concluding that there was no reasonable reliance in good faith, which Dr E disputes. She feels that she has shown change of position in the evidence she has provided to date.
  - Dr E has said that the Adjudicator has not mentioned or acknowledged that Dr E was referred to as a nurse during her appeal, which shows that her submissions were not suitably considered. She says this makes her question the validity of the appeal.

- NHS BSA has queried the Adjudicators decision to increase the significant distress and inconvenience award from the £150 it offered at stage two of the IDRP, to £500. NHS BSA says that the award offered was in line with the Ombudsman's recommendation at the point in time that it was offered, and feels that it was reasonable.
15. I agree with the Adjudicator's Opinion apart from the award for distress and inconvenience, I will therefore only respond to the key points made by Dr E and NHS BSA for completeness.

## **Ombudsman's decision**

16. I understand Dr E's comments that she expected NHS BSA to provide accurate information to her regarding her retirement benefits. However, errors do occur and estimates issued by NHS BSA hold a warning that the information provided is not guaranteed. Even without this warning I would expect an individual to check the details of the quotation carefully and compare it to previous information supplied. If there are discrepancies or cause for concern I would expect that individual to question these.
17. Dr E had been supplied with a number of letters and statements that confirmed her transferred in service was 7 years 169 days, and her total service upon deferment was 18 years 360 days. I think it reasonable that Dr E should have noticed that the June 2011 quotation stated her transferred in service was 14 years 338 days with her total service being 26 years 164 days. This is a substantial difference and I do not think it is unreasonable to expect Dr E to have been aware that the service stated was incorrect. She would have been aware how long she had worked for the NHS and she had previously been provided with confirmation of how much service had been transferred in.
18. In any case, the June 2011 quotation was provided 17 months prior to her chosen retirement date. I would expect, and often see, that most individuals would request a more up to date quotation prior to making retirement decisions.
19. When considering a case like this I must consider what defences, if any, apply. While investigating the complaint the Adjudicator considered the change of position defence. To do so in full, information was requested to show change of position, including reliance in good faith. I have also considered this information and, I do not consider that the good faith requirement has been met in this case. Whilst I take into account that it is possible that Dr E may not have noticed the overinflated service stated in the June 2011 quotation, the good faith requirement does not just concern what the applicant knew at the relevant time, but what they ought to have known. It is reasonable, from the evidence available, that Dr E should have been aware of the error, or should have questioned the service stated as it was a considerable increase on her actual service.

20. To address Dr E's final point, she was erroneously referred to as a nurse by TPAS when it reviewed her complaint after the IDRP. While this may have been distressing for Dr E, it has not impacted the outcome of her complaint. TPAS and NHS BSA are not linked, nor was TPAS involved in NHS BSA's consideration of Dr E's complaint, or its outcome. This error does not show that NHS BSA did not adequately consider Dr E's case.
21. NHS BSA has questioned the increase of the significant distress and inconvenience award from £150 to £500. NHS BSA say that they offered £150 during the IDRP, which was in line with what this Office would have directed in the past. I will award what is appropriate in the circumstances, and awards will start at £500 where the distress and inconvenience is significant. However, I do not agree that Dr E has suffered significant distress and inconvenience in this case, as I have found that it was reasonable that she should have been aware of the error. As such I will not be making a direction for an award for significant distress and inconvenience in this instance. If Dr E would like to accept the £150 that NHS BSA has offered I suggest she contact it directly.
22. Therefore, I do not uphold Dr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
15 December 2017