

## Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHS Business Services Authority ( <b>NHSBSA</b> )

### Outcome

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

### Complaint summary

3. Mrs S' complaint against NHSBSA is about the incorrect pension quotations she received in 2012 and 2014, and the fact that her pension is now significantly lower than she had expected. Mrs S would like to receive more compensation than the £1,000 offered by NHSBSA for its maladministration.

### Background information, including submissions from the parties

4. Mrs S first joined the Scheme in November 1977, when she was aged 18. She successfully applied for ill health retirement and claimed her benefits from the Scheme in November 1984 (at age 25). She rejoined the Scheme and had further breaks in her pensionable employment. Mrs S eventually rejoined the Scheme again in July 1995 and remained a member until her retirement in May 2015 (at age 55).
5. Prior to her retirement, NHSBSA issued two incorrect retirement benefit quotations to Mrs S in May 2012 and November 2014. On the basis that her last day in pensionable employment would be 12 November 2014 (her 55<sup>th</sup> birthday), the 2012 quotation said she would be entitled to a reduced pension of £9,259.40 a year and a lump sum of £61,729.34. The 2014 quotation used 19 November 2014, as her last day of pensionable employment and said her reduced pension would be £10,020.31 and that the lump sum would be £66,802.09. However, these quotations failed to take into account the fact that Mrs S was already in receipt of a pension from 1984.
6. Mrs S says she made the life-changing decision, in May 2015, to retire from her full time post on the basis of the previous retirement quotations she had received. Her intention was to invest the lump sum and return to her post on a part time basis.

7. After she had given notice to retire, NHSBSA discovered that an incorrect calculation basis had been applied when the 2012 and 2014 quotations were issued. So, it applied the correct method when calculating her final retirement benefits. NHSBSA wrote to Mrs S in June 2015, with correct details of the final benefits that would be put into payment for her. NHSBSA informed Mrs S that the current pension she had been receiving from November 1984 of £1,087.84 annually would increase by £6,987.02 to £8,070.45 a year. In addition, as she had opted to increase her lump sum, she would receive an additional lump sum payment of £46,424.40.
8. Mrs S complained to NHSBSA under the Scheme's internal dispute resolution procedure. NHSBSA upheld her complaint and admitted that it would have been unreasonable for Mrs S to have discovered that an incorrect calculation method had been used for the 2012 and 2014 pension quotations. It informed Mrs S that, although a mistake had been made, it did not confer on her the right to receive those benefits as benefits can only be paid in accordance with the regulations governing the Scheme. NHSBSA confirmed that Mrs S is in receipt of the correct benefits and it offered her £500 for the loss of expectation, distress, and inconvenience she experienced.
9. NHSBSA subsequently increased its offer to £1,000 but Mrs S did not accept this. She maintains that her life-changing decision to retire was solely because she expected to receive the higher amount. She is now unable to revisit her decision to leave full time employment and says she would have continued working full time had she received the correct information. Further, she entered into an agreement to buy a property with someone and, as a result of mistake; she had to borrow money from her brother and is now repaying this. Mrs S says she cannot sell her share of the property as there are other people involved and she would lose out financially. Mrs S would like to be fully compensated and believes she should be awarded the amounts in the retirement quotations, especially because NHSBSA accepted its error and confirmed that she could not have known that the figures were incorrect.

## **Adjudicator's Opinion**

10. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator's findings are summarised briefly below:
  - The provision of two incorrect retirement quotations amounts to maladministration by NHSBSA. Further, when it discovered its error, NHSBSA did not inform Mrs S but paid her the correct benefits instead, with no explanation or apology. The Adjudicator concluded that this error of judgment also amounts to maladministration.
  - A finding of maladministration is not enough to establish detrimental reliance. Although it was accepted that Mrs S could not have noticed the errors in the retirement quotations, it cannot be said that she has suffered an actual loss. The

reduction to the lump sum amount. of approximately £20,000, never belonged to Mrs S and she was not entitled to it.

- Mrs S had been contemplating retirement from 2012 (age 53) and intended to return to work part time following her retirement. Although Mrs S may have considered remaining in work full time after reaching age 55, it is highly likely that she would still have retired had she received the correct information, especially as she always intended to return to work on part time basis afterwards.
- It is an established legal principle that the provision of incorrect pension benefits does not, in itself, create a legal entitlement for the recipient to receive those higher (incorrect) benefits. On the basis of this principle, Mrs S has no entitlement to the higher benefits quoted. Her benefits in the Scheme can only be calculated using the correct method and NHSBSA cannot increase her benefits to pay her a higher pension and lump sum in accordance with the incorrect quotations.
- Mrs S has suffered a loss of expectation due to NHSBSA's mistake. The correct lump sum paid to Mrs S was almost 31% lower than she had otherwise expected to receive. That is a sizeable mistake which cannot easily be dismissed and it has caused significant distress and a loss of confidence in NHSBSA. Mrs S should be properly compensated for this. Given the fact that NHSBSA acknowledge that Mrs S could not have noticed the error in the quotations, and the fact that the mistake was not communicated to her prior to her benefits being paid, a higher award is justified in this case. NHSBSA recently increased its offer to £1,000. The Adjudicator concluded that this is reasonable in the circumstances and that the complaint should not be upheld.

11. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S 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 S for completeness.

### **Ombudsman's decision**

12. Mrs S points out that if she wanted to retire at age 55, she would have done so on her 55<sup>th</sup> birthday on 12 November 2014, and would not have waited until later. Further, she says she only decided to retire after receiving the second incorrect quotation dated 19 November 2014, as it confirmed her lump sum. In addition, Mrs S says the length of time between receipt of the second quotation and her actual retirement show that she was not rushing to retire but was instead considering her options.
13. Mrs S provided written evidence from her colleague which says she did not wish to commit to retiring on her 55<sup>th</sup> birthday before receiving confirmation that the previously quoted figures would apply. In addition, Mrs S would not have retired in May 2015 if she had been notified of the correct amount.

14. I have noted Mrs S' comments and the additional evidence she has provided. However, on balance, I am not satisfied that Mrs S placed reliance on the November 2014 quotation. By her own admission, she did not retire immediately after receiving it and she certainly did not request an up to date quotation based on her additional service since the previous quotation was issued. Therefore, it would be highly speculative to conclude that that Mrs S would definitely have continued in full time employment had she received the correct information. It is possible that Mrs S' opinion is with the benefit of hindsight. There is no other evidence that indicates that Mrs S was going to remain in full time employment past May 2015, when she retired and returned to work part time at age 55.5.
15. Mrs S further asserts that she had to borrow the short fall of the lump sum and is now in debt and having to repay the money. Essentially, this is a defence by Mrs S that she has "acted to her detriment", and because of the mistake, made irreversible decisions which she claims have resulted in her being financially worse off.
16. A finding of maladministration alone is not enough to establish detrimental reliance. To succeed, it will be necessary to establish that it was reasonable for Mrs Beech to have relied on the incorrect information and that she suffered a loss as a result.
17. NHSBSA has accepted that it was reasonable for Mrs S not to have noticed the error so this satisfies the first requirement of reasonable reliance. Turning now to the issue of loss, Mrs S says she purchased the property in April 2015. This was before she retired and before she became aware that she had been provided with incorrect information. Since discovering the error, Mrs S has not sold the property (or her share in it) and she continues to repay a debt to a relative. Mrs S has not said that she would not have purchased the property if she had been given the correct information.
18. I have considered what Mrs S has said, the timing and other facts, and have decided, that on the balance of probabilities, it is more likely than not that Mrs S may have proceeded with the purchase of the property had she received the correct information concerning the lump sum and her pension. In any event, a property is an asset which usually maintains or increases in value, the purchase of which cannot be said to be an irreversible action that results in detriment. Whilst it may not have been the preferred course of action for Mrs S, ultimately, she still has the choice to sell her share in the property in order to effectively mitigate her perceived loss. I do not find that she has suffered an actual loss in regard to the property because she is undoubtedly receiving some benefit from it.
19. For similar reasons, I do not find that Mrs S would succeed with an estoppel argument that there had been a negligent misstatement by NHSBSA, and it would be unconscionable not to allow her to rely on it. Even if the view is taken that the two quotations of 2012 and 2014 were "unambiguous representations" that Mrs S relied on in good faith, I do not find that there was detriment in this case.
20. Compensation is not aimed at overcoming perceived loss and my awards start from £500, where the distress and inconvenience caused has been significant. Had

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NHSBSA not increased its offer to £1,000, I would have directed this amount in recognition of Mrs S' loss of expectation and the distress and inconvenience caused. There are no additional exceptional reasons that warrant a higher award in this case.

21. Therefore, I do not uphold Mrs S' complaint.

**Anthony Arter**

Pensions Ombudsman  
14 July 2016