

## Ombudsman's Determination

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

### Complaint Summary

Dr S has complained that NHS Pensions provided her with incorrect retirement quotes in 2012 and 2014, on the basis of which she decided to reduce her working hours, a year earlier than she would otherwise have done.

### Summary of the Ombudsman's Determination and reasons

The complaint should be partly upheld against NHS pensions because its errors caused exceptional distress and inconvenience to Dr S.

## Detailed Determination

### Material facts

1. Dr S is a General Practitioner (**GP**) and a member of the Scheme. Between July 2006 and November 2015, NHS Pensions provided five pension estimates to Dr S.

	July 2006	August 2008	March 2012	August 2014	November 2015
Pension	£16,769.99	£25,087.35	£47,973.48	£56,084.21	£49,007.00
Lump sum	£50,309.97	£75,262.05	£143,920.45	£170,109.30	£147,022.00
Maximum Lump sum	n/a	£165,218.58	£256,996.45	£301,113.30	£262,538.95

2. The July 2006 estimate was requested when Dr S was aged 50. She says that her pension planning began to take on more significance from then on, due to her personal circumstances. Dr S initially said that she did not receive the 2006 estimate and it may have been requested by her financial adviser. During the course of the investigation, she subsequently found it in her files. The August 2008 estimate was received about a year after Dr S separated from her husband. Both the July 2006 and the August 2008 estimates were correctly calculated.
3. NHS Pensions says that the next two estimates, provided in March 2012 and August 2014, were incorrect.
4. In September 2013, based on the incorrect March 2012 pension estimate, Dr S renegotiated her mortgage. She increased it from a £330,000 repayment mortgage to a £410,000 mortgage split into a £250,000 interest only portion and a £160,000 repayment portion. Dr S did this to get the best possible interest rate, reduce her costs by converting as much of the mortgage to the interest only method, and raise £80,000 in capital to pay tax and National Insurance (**NI**) bills.
5. When she turned 59 in August 2015, Dr S says that she decided to reduce her working hours at her GP practice by a third. She says that she only did this having carefully considered her financial position, especially with regard to her mortgage. At the time, Dr S had a mortgage of about £388,000 (split between £138,000 repayment and £250,000 interest only), and two children in full-time education. However, she assessed that if, on retirement aged 61, based on the August 2014 estimate, she took the maximum lump sum available by commuting her pension, she would receive a lump sum of about £320,000. Her share in the practice property would also provide about £80,000. She therefore estimated that she would be able to repay her mortgage in full and rely on her NHS pension.

6. Dr S says that she had originally intended to reduce her hours from age 60 and retire at age 61. The GP practice she worked at identified a potential partner to replace her. After reviewing her finances, and considering the previous pension estimates, she decided that she could afford to reduce her hours a year earlier i.e. from age 59.
7. As a result of this decision, Dr S says that the practice employed a replacement partner to take up the hours she had given up and this commenced from August 2015.
8. On receipt of the November 2015 estimate, which showed a significant reduction in the estimated pension, Dr S complained to NHS Pensions. NHS Pensions replied on 31 December 2015, saying that the March 2012 and August 2014 estimates were wrong. It explained that Dr S' 'non-practitioner membership' had been treated incorrectly for benefit purposes, and that the figures in the estimates were overstated. It apologised for the error and offered her £200 compensation.
9. Dr S rejected the offer and asked for the matter to be escalated. She accepted that she was not entitled to the incorrectly calculated benefits and that she could not profit from a mistake. However, she said that she had reasonably relied on the incorrect figures, reduced her working hours, and could not undo that decision.
10. The complaint was considered under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). In the Stage 1 response, NHS Pensions said that the March 2012 estimate had shown a higher than normal increase from the August 2008 estimate, and there was no evidence that Dr S had questioned the increase. NHS Pensions said that Dr S had reduced her working hours and income, in expectation of higher benefits, and this only amounted to a loss of expectation, not financial loss. It upheld her complaint that she had received incorrect information, but said that she was only entitled to receive the correct benefits under the Scheme.
11. Dr S disagreed with the Stage 1 decision. She queried the November 2015 estimate and questioned if her purchase of added years had somehow reduced her pension. She brought her complaint to us when she heard nothing further from NHS Pensions under Stage 2 of the IDRP.
12. On 8 June 2017, the Adjudicator handling the complaint issued an opinion on the complaint (the **Initial Opinion**). The Adjudicator said that, with reasonable diligence, Dr S should have had sufficient cause to query the March 2012 estimate. However, she had suffered exceptional distress and inconvenience as a result of irreversible decisions made in reliance on the incorrect statements issued by NHS Pensions. The Adjudicator partially upheld Dr S' complaint and asked NHS Pensions to pay £2,000 to her for the exceptional non-financial loss caused to her by its maladministration. Both parties disagreed with the Initial Opinion.
13. Dr S has now retired from the Scheme, taking a maximum lump sum of £311,469 and a pension of £46,720 a year.

## **Summary of Dr S' position**

14. In 2013, when she renegotiated her mortgage, she relied on the incorrect March 2012 estimate. In fact, a copy of the March 2012 estimate was sent to her mortgage provider, as the lump sum from her pension was to be used to repay the interest only element of her mortgage. On the basis of the March 2012 estimate, she was able to borrow an additional £80,000 to pay significant tax and NI bills, and renegotiate her mortgage to keep her monthly payments down.
15. She believes that, based on the 'dynamisation' method used by NHS Pensions, purchasing the number of added years that she did may actually have worked against her. She considers that purchasing fewer added years would have resulted in a higher pension.
16. The estimated figures from all the pension estimates look uniform, and there is no unusual spike in the estimates. Her reliance on the estimated figures prior to 2015 was reasonable and NHS Pensions is taking a harsh view to hold her to account for its own mistakes.
17. Had she been aware of the error in the March 2012 and August 2014 estimates, she would not have reduced her hours in August 2015, and could have continued working full-time for a few more years beyond age 60.
18. Her decision in August 2015, to reduce her hours by a third, was a relatively small change and not a huge lifestyle change. However, she relied on the incorrect estimates provided and cannot unwind her decision.
19. She has now found the July 2006 pension estimate sent to her financial adviser, however, she did not receive any advice on it.
20. There was a barely detectable variation in the increases shown in the pension estimates from July 2006 to August 2008, and from August 2008 to March 2012. This amounts to a difference of about 1.6% a year between the correct and incorrect pension estimates. Although slight, when compounded, this difference resulted in a reduction to her projected lump sum of about £40,000 and a lower annual pension of about £6,000 a year. Nevertheless, she relied on the actual cash amounts when deciding to reduce her hours in August 2015.
21. She has been prudent and diligent but she has been held to an unfairly high standard when she is a doctor, not a pensions expert. It was not unreasonable for her to rely on the pension estimates provided to her.
22. When she received the correct November 2015 pension estimate, she had already worked for several months on reduced hours and it was too late to dispense with the services of her replacement cover. Furthermore, NHS Pensions told her in March 2016, that it had upheld her complaint regarding the incorrect information provided and strongly inferred that it was waiting to quantify her financial loss.

23. She did not consider mitigation because NHS Pensions gave her the impression that she would be indemnified against her financial loss. As she was aged 59, it would not have been fair to expect her to seek work elsewhere. Working extra hours elsewhere would bring its own stresses and it was not something she could have done safely and efficiently.
24. Dr S did not believe that The Pensions Ombudsman should deal with the issue of quantum and that we should direct NHS Pensions to correspond directly with her to quantify her financial loss and remedy it. She said that if the Ombudsman insisted on dealing with the quantum of loss, she would accept redress calculated on the loss of gross partnership earnings from August 2015 to August 2016.
25. If NHS Pensions had accepted her complaint about dynamisation of her contributions and recalculated her benefits accordingly, her complaint about the incorrect pension estimates may not have arisen.
26. After receipt of the preliminary decision, Dr S submitted further comments.
27. Dr S considers that an oral hearing would help determine the veracity of her account. She has a financial report by her financial adviser, dated 2 September 2015, which demonstrates that she relied on the incorrect statements from NHS Pensions. Her financial adviser conservatively assumed she would receive a lump sum of £300,000, although she projected a sum of £320,000. This would have enabled her to repay the bulk of the mortgage about July 2016, and the report shows this intention.
28. When she received the August 2015 estimate, she did not accept that the figures were necessarily correct and she made that point to NHS Pensions. She had every expectation that the perverse method of purchasing added years in her case would not be allowed to stand, and there would be no loss to mitigate.
29. The November 2015 estimate showed that she would have a shortfall of about £39,000 in her mortgage, therefore it is not reasonable to assume that she would still have continued with her plan to reduce her working hours at the surgery. It would have been straightforward to retain her normal working hours at the practice, as it would have made little difference to her to carry on for another year. The element of a work/life balance is real but she would have been more concerned about the financial element. She only took the decision to reduce her hours after considering the financial impact. The partners at the practice had identified a suitable replacement who they thought would make an excellent partner, and this triggered her thoughts about handing over earlier than planned.
30. In July 2016, as she had no cash reserves, she had to borrow £15,000 from a relative to help see her through the next 12 months, because she was not prepared to jeopardise the complaint by taking her benefits. She has provided a copy of the cheque to this office.

31. Mitigating her situation by working as a locum elsewhere would not have been reasonable compared to continuing to work at her own practice. Considering all the stresses involved and her age at the time, it is not fair to consider she could have mitigated her situation.
32. The March 2012 and August 2014 estimates did not say that they were not guaranteed – that is the Ombudsman's interpretation. She considers that she has been treated unfairly compared to other cases where such similar wording in estimates was criticised by the Ombudsman as not justifying such a difference in figures. The March 2012 and August 2014 estimates were serious errors which she used for guidance, as NHS Pensions expressly said she could do. Although she probably experienced a loss of expectation, she most certainly suffered a financial loss by acting to her detriment based on the estimates.
33. Her loss cannot be written off just because she was still able to retire at 61 as planned. The fact is that, whatever benefits she may have received later, she lost one third of her earnings during 2015-16. Furthermore, the lack of response from NHS pensions regarding her complaint surely warrants more than an award of £1,000 for the distress and inconvenience she has suffered.

#### **Summary of NHS Pensions' position**

34. All Dr S' added years' service credit had incorrectly been included in her practitioner pay, and this caused the incorrect calculation of her benefits. It says that there was an increase of 90% from the benefits quoted in August 2008 compared to the benefits quoted in March 2012. It would have expected Dr S to query this large increase before making any lifestyle changes. And, even if Dr S did not receive the July 2006 estimate, she would have been able to see that the August 2008 figures had almost doubled by March 2012 - it is not unreasonable to expect a member to query such an increase before making any lifestyle changes. NHS Pensions accepts that two of the five estimates were incorrect, but the November 2015 estimate was correct and Dr S had continued to accrue benefits.
35. NHS Pensions says that Dr S did not query the incorrect figures in the March 2012 or August 2014 estimates, and she has stated that the decision to reduce her hours was not a significant lifestyle change. NHS Pensions acknowledges the distress and inconvenience caused to Dr S, but does not believe that she has suffered exceptional non-financial loss. Given the circumstances of the case, NHS Pensions initially considered that £500 was an appropriate level of award and £2,000 was excessive.
36. After receipt of the preliminary decision, NHS Pensions submitted that it was prepared to pay £1,000 to Dr S, in respect of the significant distress and inconvenience caused to her.

## Conclusions

37. I should start by addressing why I consider that an oral hearing would not make a material difference to the outcome in this case. Oral hearings are useful where there are conflicting accounts of a significant event and the credibility of the witness needs to be tested. The fact that I am able to reach a different conclusion to Dr S, does not mean that her credibility is under review. I do not question her honesty or integrity, she has given as forthright an account as she can under the circumstances. Dr S acknowledges that it is difficult to determine what an individual would do in a hypothetical situation, and the fact that I have reached a different conclusion to her does not mean one of us is right and the other is wrong. There are no absolutes either way just my view based on a balance of probabilities. The primary facts of the case concern the incorrect estimates, which are not disputed. Meeting in person would not help determine what Dr S may have done if the errors had not occurred she has already provided written evidence of her likely actions. I would not hold an oral hearing as an avenue to plead a case in person and or to persuade me of her true intentions.
38. NHS Pensions has agreed that it provided incorrect pension estimates to Dr S in 2012 and 2014. This amounts to maladministration, and there is no dispute that she has suffered non-financial loss as a result. Although, the amount awarded for the non-financial loss is disputed, the more pertinent issue concerns Dr S' claim for financial loss.
39. Dr S says that she relied on the pension estimate issued in August 2014, which showed she could receive a reduced pension of £45,167 a year and a maximum lump sum of £301,113. She estimated that the lump sum would increase to about £320,000 (her adviser estimated £300,000) by August 2016 and, with a GP Partnership share of about £80,000 - £90,000, this would allow her to repay her mortgage. She says this demonstrates she took decisions based on the incorrect pension estimates and that she placed reliance on them by reducing her hours from August 2015, causing her to have a reduced income, and suffer a financial loss as a direct result.
40. NHS Pensions considers that Dr S should have questioned the figures in the March 2012 and August 2014 pension estimates, as they showed significant increases which should have alerted her. Dr S strongly refutes this and I agree that the scale of annual increases reflected in the incorrect pension estimates do not appear significantly out of kilter with the previous correct estimates, such that she should easily have realised the error.
41. Using the figures provided by NHS Pensions, the increase from July 2006 to August 2008 was the equivalent of £4,152 per year. From August 2008 to March 2012, the increase was the equivalent of £5,085 a year. From March 2012 to August 2014, the increase was the equivalent of £3,476 a year. This does not lead me to conclude that there was a substantial increase in the estimates, which Dr S should necessarily have

noticed. I am therefore satisfied that Dr S could not reasonably have realised the error by NHS Pensions.

42. Dr S says that, notwithstanding the incorrect statements, she would have still taken out the increased mortgage. However, she would not have decided to reduce her hours from age 59, as she would have been concerned about repaying her mortgage while her children were still in full-time education. Ideally, she would like the issue of the quantum of her financial loss to be left up to her and NHS Pensions to resolve.
43. The role of this office is to deal with pension complaints and, where maladministration is found, decide how things should be put right. Consequently, the remedy in each case is decided by the Pensions Ombudsman.
44. As acknowledged by Dr S, it is difficult to say, without the benefit of hindsight, what her likely actions would have been had the errors not occurred. The incorrect March 2012 estimate enabled her to increase her mortgage and raise much needed capital against her property. Quite unintentionally, she has probably benefitted from being able to do this. In any event, the mortgage is a debt that she would have needed to repay, regardless of the error by NHS Pensions.
45. Dr S says that she borrowed £15,000 from a relative in July 2016, to help see her through the following year, as she was reluctant to take her benefits while they were being disputed. I assume that these are the same funds that, in previous correspondence, she stated were to pay off a tax/NI bill due on 31 July 2016. But for the error, she intended to retire for a day in July 2016, take her pension benefits, and return to work on reduced hours until age 61.
46. Although Dr S chose not to take her benefits at age 60, she has still been able to keep to her plan to retire aged 61, and has received a lump sum of £311,469 and a pension of £46,720 a year. This is more than her financial adviser estimated in September 2015, that she would receive on retirement. However, she considers that this does not offset the fact that she has lost income because she reduced her hours a year earlier than she would otherwise have done, had she known the correct position. The lump sum she received, albeit a year later than planned, is relevant because it shows that her actions, which were based on receiving £300,000, did not result in the shortfall she assumed.
47. With regard to the lost income Dr S is claiming, I am unable to reach the conclusion that she would not have reduced her hours from age 59 even if the error had not occurred. She always planned to reduce her hours in anticipation of retirement and it may not have been unreasonable for her to have considered doing so even if the correct estimates had been provided. Also, Dr S says that the partners at the surgery had already identified her replacement as partner and that she bore this in mind when considering her plans.
48. It is, of course, a possibility that Dr S would have carried on and only reduced her hours at age 60, as she initially considered doing. However, in August 2015, she was



still two years away from retirement and there is the likelihood that she may have still contemplated doing so at 59, regardless of the pension estimates. Clearly, her benefits would have been higher had she remained in full-time employment until age 60, but that equally applies to working full-time until age 61, something she did not intend to do. Taking up part-time employment to replace her reduced hours, and mitigate her reduced income, would also have had a similar effect. Nevertheless, despite the errors in the pension estimates and the reduction in her hours, Dr S was still able to retire as planned.

49. Dr S has said that NHS Pensions led her to believe it would indemnify her against any financial losses, so she did not take any steps in mitigation. But the letter from NHS Pensions said that she had not suffered any financial loss and did not give any indication that she would be compensated. NHS Pensions explained that she had instead suffered a loss of expectation, which could not be quantified at the time. I note that NHS Pensions did not issue a Stage 2 decision before we started our investigation, but this does not, in my view, change the outcome. NHS Pensions has always accepted that it issued incorrect statements. However, it continues to maintain that it is not prepared to either pay higher benefits than Dr S was entitled to or make up for her reduced income.
50. Regarding mitigation, Dr S became aware of the error in November 2015, several months after she reduced her hours, so it was too late to change her mind about her working hours. The GP Practice provided a letter confirming that she was unable to restore her full-time hours because a replacement had been appointed. However, from then on, she was in a position to try and mitigate any financial loss.
51. Dr S says that it would not have been fair to expect her, aged 59, to take up other employment to mitigate the reduction in her future retirement benefits. She does not consider it was something that she could have done safely and efficiently. I appreciate the points she has made on this issue, but we expect individuals, wherever possible, to take reasonable steps to mitigate any financial loss. Some form of mitigation would have given her the opportunity to address her reduced income, which is central to her complaint. Dr S makes the point that the attraction of having a work/life balance is obvious, but only where finances permit. I agree that her income would have been higher if she had not reduced her hours and that continuing to work in her practice would have been a lot easier than working (probably as a locum) elsewhere. On the other hand, she has had the advantage of working shorter hours and still maintaining her retirement plans. Dr S has not taken on additional work to make up for her reduced income, but she does not appear to have suffered the significant loss she initially assumed on receipt of the correct November 2015 estimate.
52. More importantly, it is also the case that the estimates provided to Dr S were not guaranteed to provide the level of benefits that she assumed. She made an independent assessment that the figures would be sufficient to provide an amount at retirement which would allow her to repay her mortgage. However, NHS Pensions

did not guarantee that the estimates would do so. I note Dr S' comments that the documents actually say that the figures are for "guidance only" but does not say it is not guaranteed. The figures are referred to as an estimate which, in everyday use, would be understood to mean it cannot be guaranteed, this is not giving it a different meaning to that intended. However, it is also accepted that the figures were incorrect and therefore not suitable for guidance. On this narrow point, I do not distinguish this case from similar decisions by this office. Nonetheless, that does not mean that the outcome of this case would be the same as the case mentioned by Dr S. A quick look at decisions on our website will reveal "similar" cases with differing outcomes, each case is assessed on its own merits. Even so, Dr S was entitled to use the estimates as guidance for her retirement planning, but the error by NHS Pensions did not allow her to do this. For this, her complaint has partly been upheld.

53. Dr S has also raised the issue of the added years she agreed to buy. I cannot comment on what would have been more advantageous in her circumstances. She would have received pertinent information in August 1990, when she purchased the added years, and there is no clear evidence that she has been misled. It was not for NHS Pensions to calculate the optimum number of added years that she should have purchased as that was a matter for her to decide. In this respect, she has been treated in the same manner as other members purchasing added years, and she is receiving commensurate benefits in respect of that purchase.
54. However, I do not agree with NHS Pensions' initial view that an award of £500 is adequate to put right the non-financial injustice it caused to Dr S. In my opinion, Dr S has experienced exceptional disappointment due to the instances of maladministration by NHS Pensions. Although Dr S has not mitigated her perceived loss, that does not detract from the significant impact of those errors, particularly given how close Dr S was to her normal Scheme pension age. I would normally award £500 where significant distress and inconvenience has been caused by an administrative error. However, in cases such as this I consider that a higher award of £1,000 is appropriate.

### **Directions**

55. Within 21 working days of the date of this Determination, NHS Pensions shall pay £1,000 to Dr S in respect of the significant distress and inconvenience she has suffered.

**Anthony Arter**

Pensions Ombudsman

20 June 2018