

Ombudsman's Determination

Applicant	Mrs D
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHSBSA)

Outcome

1. Mrs D's complaint against NHSBSA is partly upheld, but there is a part of the complaint that is not upheld. To put matters right, for the part that is upheld, Mrs D should be compensated for the significant distress and inconvenience NHSBSA's maladministration has caused her to suffer.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs D says she decided to continue working outside NHS employ, and to later stop work and suspend her savings plans, based on a misstatement by NHSBSA in May 2006. Decisions she says are now irreversible, Mrs D says she relied on the overstated figures in the reasonable expectation that they were correct. Mrs D would like NHSBSA to honour the higher (incorrect) figures.
4. Mrs D says NHSBSA made other mistakes in the calculation of her benefits, and mishandled her enquiries.

Background information, including submissions from the parties

5. Mrs D will attain normal pension age (age 60) in June 2017.
6. On 28 May 2003, in response to a request from her then employer (the **Employer**), NHSBSA provided an estimate of Mrs D's projected benefits at age 60. NHSBSA quoted a pension of £22,439 per annum and lump sum of £67,317, based on estimated pensionable pay of £59,088.
7. On 24 November 2004, NHSBSA provided Mrs D's adviser with an estimate of her benefits at age 60. NHSBSA advised a pension of £23,730 per annum and lump sum of £71,192 based on estimated pensionable pay of £62,488. NHSBSA detailed the

formula and accrual rate used to calculate the benefits (the **November 2004 Estimate**).

8. Mrs D says, based on the November 2004 Estimate, she decided that she would rely on the spouse's pension, in respect of her husband's pension, and her Scheme pension on retirement. Mrs D acknowledges that the November 2004 Estimate was based on her accruing further service in the Scheme to age 60.
9. On 23 February 2005, Mrs D notified the Employer's pensions department of her decision to leave the NHS on 29 July 2005 - for the time being. She asked whether, if she took up a post within the NHS on a lower salary, she would need to leave and re-join to protect her accrued pension. And, if so, how long the break would need to be.
10. Mrs D's note of details provided by the pensions department at the time reads:-

"part time at same ... [hourly] rate is ok. part time a lower rate is reflected on pension payments. leave for 1yr from end of employment date (inc holiday payments etc)".
11. Mrs D says in February 2005, she asked the Employer about taking her pension early. On 15 March 2005, approximately four months after the November 2004 Estimate, and around five months before Mrs D left the Scheme, NHSBSA provided the Employer with an estimate of her benefits - based on a proposed leaving date of 31 July 2005 and estimated pensionable pay of £65,044. NHSBSA quoted an estimated pension of £10,543 per annum and a lump sum of £31,629. NHSBSA advised the accrual rate and formula used to calculate the pension (the **March 2005 Estimate**).
12. Mrs D says she can only assume that the March 2005 Estimate was prompted by her enquiry in February 2005.
13. On 25 August 2005, Mrs D left NHS employment and became a deferred member of the Scheme.
14. On 15 May 2006, fourteen months after the March 2005 Estimate, NHSBSA provided Mrs D's adviser with an estimate of benefits as at her date of leaving the Scheme (the **May 2006 Estimate**). NHSBSA advised a pension of £19,162 per annum and lump sum of £57,489 - a difference of around 82% when compared with the figures in the March 2005 Estimate. NHSBSA said the figures were based on service of 12 years and 45 days, and pensionable pay of £69,294.
15. NHSBSA has since acknowledged that the May 2006 Estimate was (incorrectly) based on total service of 22 years and 45 days - rather than correct service of 13 years and 303 days. It also omitted to include added years of 1 year and 258 days in the calculation. NHSBSA says it does not consider it unreasonable to expect Mrs D's adviser to have applied the pension formula provided and noted the error.

16. Mrs D says the enquiries she made in February 2005, was because she planned to return to the NHS. However, on reliance on the May 2006 Estimate, she decided not to do so, and to continue working outside NHS' employ.
17. Mrs D says the March 2005 Estimate would have made little difference to her advisor's actions at the time of the misstatement in May 2006, as her adviser wanted to obtain more reliable, and up to date figures.
18. During the course of investigation, NHSBSA advised that, on 25 November 2006, 15 months after Mrs D left the Scheme, NHSBSA sent notification of preserved benefit entitlement to the address it held for Mrs D at that time (the **Notification**).
19. The Notification quoted an estimated pension of £11,683 per annum and lump sum of £35,049 based on pensionable pay of £67,581. Details of the formula used to calculate the pension were included in the Notification.
20. NHSBSA says, in line with its standard practice, a notification of deferred benefits is usually sent some 12 -13 months after the last electronic update by the employer - partly to allow for a member's return to the NHS within 12 months of leaving (as the membership would be treated as continuous). NHSBSA says the timescale in which Mrs D's Notification was issued is consistent with that practice.
21. Mrs D says at the time NHSBSA alleges it sent the Notification, the Scheme's AVC provider held her current address. Mrs D says she received other correspondence from NHSBSA at her previous address - sent around the time NHSBSA says the Notification was issued. Mrs D says she started using her current address in June 2004, but retained and collected post from the previous address until April 2010.
22. Mrs D says if NHSBSA had issued the Notification within two months of her leaving the NHS, in line with pension legislation, it would have been used as the basis of her adviser's financial advice. Consequently, there would have been no need to request an estimate in May 2006.
23. Mrs D says, given impending changes to the Scheme, well publicised at the time, had she received the Notification, she would have returned to NHS employment and re-joined the Scheme.
24. Mrs D says because NHSBSA has repeatedly made mistakes in relation to her pension and did not mention the Notification earlier, she questions whether it was actually sent.
25. In 2007, Mrs D says she and her husband decided she should stop working in September that year, when her contracts came to an end; suspend their savings plans; and rely on his income until she reached age 60. She stopped work at the end of 2007.

26. On 2 January 2008, Mrs D notified NHSBSA of her change of address. Mrs D says she received correspondence from NHSBSA in late 2007, and that likely prompted her to advise NHSBSA of her current address.
27. In April 2015, Mrs D says she accessed the Scheme's online portal to check the current value of her deferred benefits. The statement generated on 23 April 2015, showed an annual pension of £14,868 and a lump sum of £44,604, based on pensionable pay of £67,581 and service of 13 years and 303 days (the **April 2015 Estimate**).
28. Mrs D says she noticed the figures in the April 2015 Estimate were significantly reduced from those in the May 2006 Estimate. But at the time, she believed the discrepancy was because the quote was obtained via the portal, and that she may have made some incorrect entries. Consequently, she did not raise the issue with NHSBSA straight away.
29. In August 2015 Mrs D says she accessed her online pension statement when reviewing her financial position. She made enquiries with NHSBSA about the reduction in her benefits but heard nothing for several months.
30. Mrs D's pension statement, which she obtained via the portal on 14 January 2016, showed an annual pension of £15,270 and a lump sum of £45,810. The pensionable pay and service stated is consistent with that shown in the Notification and April 2015 Estimate.
31. NHSBSA says Mrs D requested pension estimates on five separate occasions, between September 2014 and July 2016. But as NHSBSA failed to reply to those requests, her complaint was upheld on this point.
32. Mrs D says she now realises that during its review of her case, NHSBSA failed to identify that the March 2005 Estimate was also based on incorrect service [the date of leaving used was wrong].

Adjudicator's Opinion

33. Mrs D's complaint was considered by one of our Adjudicators who concluded that further action was required by NHSBSA, to compensate Mrs D for the significant non-financial loss its mistakes has caused her to suffer. The Adjudicator's findings are summarised briefly below:
 - The November 2004 Estimate was based on Mrs D remaining in Service to age 60, and accruing a further 12 years' pensionable service. Given that, and the material difference in the figures, when compared with the March 2006 Estimate, she ought to have had sufficient reason to query the figures in the May 2006 Estimate.

- While Mrs D was entitled to expect that the May 2006 Estimate would provide an accurate indication of her pension benefits, the figures were significantly higher than those quoted in the March 2005 Estimate (a variance of 82% - with no corresponding increase in either pensionable pay or service).
 - This ought to have had given Mrs D sufficient reason to at least suspect that a mistake had been made. Had she made enquiries at the time, it is likely that she would have been alerted to that fact.
 - The Notification was correctly addressed to the address NHSBSA held at the time - Mrs D's previous address. NHSBSA cannot reasonably be held responsible if she did not receive it.
 - To put matters right, NHSBSA should pay £700 to Mrs D.
34. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs D has provided further comments but these 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 D for completeness.

Ombudsman's decision

35. The fact that NHSBSA issued a pension estimate in May 2006, which overstated Mrs D's benefits is not in dispute. Mrs D took the decision to leave the NHS, before the misstatement in May 2006. This is also not in dispute.
36. Mrs D says the Adjudicator's findings focus around the 'reasonableness' of her acceptance of the May 2006 Estimate and fails to address issues which are fundamental to her complaint. Mrs D says, with the benefit of hindsight, she wished she had mistrusted the May 2006 Estimate and queried it, but around the time she received it, she was experiencing a number of changes in her personal circumstances; her husband was retiring, they were moving house, she was establishing a consultancy business, stress levels were high and time was short.
37. Mrs D says the difference between her actual benefits and the expected benefits represent a very real and significant financial loss to her.
38. Mrs D points out that the 15 March 2005 Estimate was also incorrect because it was based on a leaving date of 31 July 2005 - not her correct leaving date of 25 August 2005 - a difference of 25 days in service. Mrs D questions whether it would have been reasonable for her to have relied on this estimate, and not the May 2006 Estimate - when both estimates were wrong.
39. Mrs D says, given that the figures in the estimates fluctuated, were incorrect, difficult to calculate, and there were inaccuracies in the underlying data used by NHSBSA - the calculations were 'impractical and worthless', it was impossible for a lay person to compare the figures. I agree that it was maladministration to produce statements

based on incorrect underlying data, and in circumstances when a statement says it is based on a specific number of years, but in fact is based on something different, it is not reasonable for the scheme to expect a member to be able to spot the error.

40. I accept that Mrs D continued working outside the NHS in the expectation of receiving the higher (incorrect) benefits. However, she is only entitled to receive the benefits provided for under the relevant regulations that govern the Scheme. The difference in the quoted levels of pension benefits does not represent actual financial loss because she was never entitled to the higher benefits quoted in May 2006. What she has suffered is a loss of expectation.
41. Mrs D says she used the May 2006 Estimate as the basis for her retirement planning. She says she would have rejoined at some point after she had received it if it had contained the correct information about her preserved benefits. She says that this would have been achievable for her because of the networks she had established and I accept that. However, Mrs D has also said there were multiple factors in play when she made her decisions in 2007. I can see nothing from which it would be proper to infer that she would have made a different choice about how and where to work had the 2006 statement been correct. I can see no evidence of reliance on it to make a particular decision.
42. I am also mindful of the fact that she is seeking to demonstrate reliance on one statement, showing inflated figures, when she had previously received other statements. The figures quoted in May 2006, were considerably higher than the figures quoted in March 2005 - the pension had nearly doubled in just over a year and there was no logical explanation for that on the face of the statements. Mrs D says she compared the May 2006 figures - based on service to August 2005, with the November 2004 figures - based on prospective service to June 2017. But these statements declared a difference in pensionable service of nearly 12 years. I do not find that it was reasonable to expect that her annual pension - on leaving the Scheme in August 2005, would only be around £4,500 less than the pension based on prospective service.
43. Turning to non-financial injustice. Mrs D says the extent of NHSBSA's maladministration was not fully acknowledged in the Adjudicator's Opinion, nor the extent of the distress she has suffered.
44. Mrs D says she did not request estimates on five separate occasions. Rather, she highlighted to NHSBSA that she had received erroneous estimates, asked NHSBSA for an explanation, and requested correct information. Mrs D says it was not until she complained to NHSBSA that she received an acknowledgement.
45. While I accept NHSBSA mishandled those enquiries, I do not consider this materially changes the outcome, given the sequence of events.

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46. In conclusion, I do not find that that Mrs D can demonstrate reasonable reliance on the misstatement. But she should be compensated to the extent that she has suffered significant non-financial loss.

Directions

Within 21 days of the date of this Determination NHSBSA shall pay Mrs D £700.

Karen Johnston

Deputy Pensions Ombudsman
26 May 2017