

Ombudsman's Determination

Applicant	Dr L
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS Pensions)

Outcome

1. Dr L's complaint against NHS Pensions is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) NHS Pensions should compensate her for the non-financial loss she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr L says she decided to purchase additional pension and retire at age 60, based on an inflated pension estimate provided in August 2013. By the time she became aware of the mistake, she had already committed to exchanging contracts on her house and on a new property and had made lifestyle changes. Had she been given correct figures, she would not have purchased additional pension in 2014, and would have remained in employment until May 2016.
4. Dr L says NHS Pensions also delayed paying her pension benefits.

Background information, including submissions from the parties

5. On 20 September 2010, NHS Pensions provided Dr L with a statement of her pensionable service. NHS Pensions confirmed transferred in membership of 1 year and 150 days.
6. On 19 August 2013, NHS Pensions provided Dr L with a pension forecast in response to an enquiry about her Scheme benefits. NHS Pensions advised an annual pension of £32,918 and a lump sum of £98,756 payable from her normal pension age, based on service accrued as at 31 August 2013. In compiling this estimate it mistakenly counted in 3 years and 150 days instead of the 1 year 150 days which it had previously confirmed. NHS Pensions said that she had purchased £500 of additional pension, which was not included in the pension quoted (the **August 2013 Estimate**).

7. In May 2014, on the basis of the figures in the August 2013 Estimate, Dr L says she decided to increase her Scheme pension by purchasing another additional pension of £500 at a cost of £9,460, bringing the total additional pension to £1,000. Dr L says she believed at the time that the benefit of buying the additional pension outweighed the cost of the purchase.
8. Dr L says she also made the decision to retire at age 60 (May 2015) on the basis of the August 2013 estimate.
9. In October 2014, Dr L sold her house, in anticipation of her forthcoming retirement.
10. On 22 January 2015, NHS Pensions provided Dr L with a pension estimate in response to an enquiry about her Scheme benefits. NHS Pensions quoted an accrued annual pension of £35,115 and a lump sum of £102,018 as at 31 May 2015. NHS Pensions advised that additional pension of £1,000, had been revalued and included in the estimate (the **January 2015 Estimate**).
11. On 17 March 2015, Dr L queried the figures with NHS Pensions. She said that the pension in the August 2013 Estimate of £32,918 - which did not include the additional pension she had purchased, did not tally with the pension of £35,115 in the January 2015 Estimate - which did include additional pension (and further service between 31 August 2013 and 31 May 2015).
12. On 31 March 2015, NHS Pensions wrote to Dr L acknowledging that the pension figures in the August 2013 Estimate were wrong as it had overstated her transferred in membership in the estimate by exactly two years.
13. On 22 April 2015, Dr L exchanged contracts and finalised her house move.
14. On 26 April 2015, Dr L gave written notice to her employer of her intention to retire in July 2015. On 28 April 2015, two days later, she verbally confirmed the position.
15. On 19 May 2015, Dr L returned from leave and asked her employer if she could postpone her retirement until 2016. Dr L says her employer insisted that she maintain her original decision to retire in 2015 because they had already made arrangements to fill her role.
16. On 7 September 2015, Dr L retired from the NHS' employ.
17. On 7 October 2015 and 16 October 2015, Dr L chased payment of her benefits. Dr L says despite NHS Pensions' assurance that her lump sum would be paid by 7 September 2015, it was not paid until 14 September 2015. Dr L says her first month's pension instalment was also paid late.
18. NHS Pensions accepts that it received Dr L's retirement application in early July 2015, and that it delayed paying her pension benefits; it has apologised to Dr L for this. NHS Pensions says that the Scheme has a duty to make payment 30 calendar days from the due date – by 7 October 2015, in Dr L's case. NHS has paid Dr L £129 in late payment interest.

19. NHS Pensions acknowledges that a mistake was made in the August 2013 Estimate but it does not accept that Dr L has been financially disadvantaged as a result. While NHS Pensions says it accepts that Dr L discussed her intention to take early retirement with her employer, it says she received a correct estimate before she gave her employer written notice of her retirement. NHS Pensions has paid £172 to DR L in recognition of the non-financial loss she has suffered.
20. NHS Pensions says no further statements issued to Dr L have been found to be incorrect.
21. Dr L considers payment of the pension benefits she would otherwise have accrued, had she continued in employment until May 2016, would be reasonable compensation.

Adjudicator's Opinion

22. Dr L's complaint was considered by one of our Adjudicators who concluded that further action was required by NHS Pensions. The Adjudicator's findings are summarised briefly below:-
 - The difference in the quoted level of benefits does not represent actual financial loss because Dr L was never entitled to the incorrect benefits in the August 2013 Estimate.
 - It is clear that Dr L initially intended to retire at age 60, based on incorrect (inflated) pension figures. But she was aware that a mistake had been made before she formally gave notice to her employer of her retirement. It is difficult to see how any prior intention to retire, without actual (formal) notice, could not have been retracted when she discovered that a mistake had been made.
 - The additional pension forms part of her overall pension entitlement under the Scheme. It is speculative whether she has actually lost money as a result of the purchase.
 - The Scheme regulations require late payment interest to be calculated using base rate, which is similar to what the Ombudsman would direct. There is no reason to doubt that the interest paid to her was not calculated on the basis stipulated by the Scheme regulations.
 - Dr L has suffered a significant loss of expectation for which she is entitled to be compensated. An award of £500 would be appropriate in the circumstances and in line with what the Ombudsman would direct.
23. Dr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr L has provided her further comments but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Dr L for completeness.

Ombudsman's decision

Dr L says the sequence of events clearly show that her decision to retire, when she reached age 60, was based on the August 2013 Estimate. She had no reason to know which estimate was correct: the August 2013 Estimate or the January 2015 Estimate.

24. Dr L says it is unlikely that she would have received NHS Pensions' letter of 31 March 2015, acknowledging that the figures in the August 2013 Estimate were wrong, before 7 April 2015. Dr L says this would have been the earliest date that she would have been in possession of a "definitive estimate."
25. Dr L says after she exchanged contracts on her house on 22 April 2015, she gave her employer written notice of her intention to retire – in writing on 26 April 2015, then verbally on 28 April 2015. She went on annual leave from 30 April 2015, and moved house in the ensuing days.
26. Dr L says she returned from leave on 19 May 2016, by then she was aware that NHS Pensions had made a mistake. Immediately on returning to work, she spoke to her employer about postponing her retirement.
27. Dr L says she was put under a lot of pressure to continue with her plans to retire early. A colleague had already been offered and had accepted her role, and it appeared to have been made common knowledge that she would be retiring.
28. Contrary to the Adjudicator's Opinion, she was not able to rescind her retirement despite her efforts. She was however able to postpone it until September 2015.
29. My starting point is that Dr L 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 misquoted in August 2013. What she has suffered is a loss of expectation.
30. I am satisfied that no promise was made to Dr L such that it would give rise to an entitlement to the higher level of pension that was based on double her transferred in membership.
31. It is evident that maladministration has occurred in this case. Dr L was misquoted pension figures in August 2013, which raised her expectation that she had accrued an estimated pension of £32,918 per annum as at 31 August 2013, on the basis of which she made plans for her retirement. It was reasonably foreseeable that she would make plans based on the details provided. NHS Pensions should have ensured that the figures were correct.
32. But I find that Dr L was or should have been aware of the correct figures by at the latest 7 April 2015, the date she says she would most likely have received NHS Pensions' letter of 31 March 2015. I am mindful that after being notified that the

figures in the August 2013 Estimate were wrong, Dr L then gave notice to her employer on 26 April 2015, of her intention to retire i.e. she had already been notified of the correct figures at the point when she gave notice and exchanged contracts. On that evidence, I conclude that Dr L cannot prove, on the balance of probabilities, that she reasonably relied on the misstatement when making a final decision to retire or buy her new home. At the point when those decisions were made she was on notice of the error and still had an opportunity to revise her initial plans. I accept that by 19 May 2015, the position had changed and she was unable to rescind her notice, which was unfortunate, but that does not alter the conclusion that she did not reasonably rely on the 2013 figures when making her decision to give notice. I also accept that she had received inconsistent statements, but if she was in doubt about which set of figures was correct, I would have expected her to seek clarification before making potentially life-changing decisions.

33. I have seen no evidence that the error in the August 2013 estimate caused a purchase of additional pension which Dr L would otherwise not have made. Dr L has clarified that she bought the additional pension because she planned to retire at 60. She now considers that she might have been better off investing the money and thinks she would not have bought the additional pension if she had known she needed to keep working longer. However, I have to consider what she would have done had she known the August 2013 estimate was inflated, without applying the benefit of hindsight. On this evidence, I am not persuaded she would probably have bought less additional pension. Moreover she still has the benefit of the purchase. Turning now to NHS Pensions' settlement of Dr L's benefits. I fully accept that Dr L's pension benefits were paid late. But NHS Pensions has remedied this injustice by paying interest to her. Any outstanding injustice is in relation to the significant disappointment that she has clearly suffered.
34. NHS Pensions has already paid an amount of £172 to Dr L for non-financial loss. In my view the matter warrants the minimum award of £500.

Directions

35. To put matters right, NHS Pensions shall, within 21 working days of the date of this Determination, pay £328 to Dr L to make a total award of £500.

Karen Johnston

Deputy Pensions Ombudsman
26 October 2017