

Ombudsman's Determination

Applicant	Miss Y
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS BSA

Outcome

1. I do not uphold Miss Y'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. Miss Y complaint concerns the difference between the pension benefits quoted to her on 3 December 2016 and the actual benefits to which she is entitled. Based on the 3 December 2016 quote (**the December quote**), Miss Y decided to resign and retire. However, as she is only entitled to an amount which lower than the pension she was expecting, Miss Y says she is now having to rely on others to support her. As such, she would like NHS BSA to honour the December quote figures.

Background information, including submissions from the parties

4. Prior to retiring, Miss Y received four quotes in 2016 which provided the following figures:
 - 23 June 2016: £8,088.44 annual pension with a £25,092.87 lump sum
 - 12 October 2016: £8,015.80 annual pension with a £24,047.60 lump sum
 - 3 December 2016: £9,443.70 annual pension with a £29,297.29 lump sum
 - 29 December 2016: £8,015.80 annual pension with a £24,047.66 lump sum.
5. Miss Y paid £75 to be provided with the December quote, as the previous quotes listed her Band 5 pay of £28,105.66, but had missed her Band 6 pay. The quote dated 29 December 2016, also omitted the Band 6 pay, so Miss Y knew these quotes were incorrect. Based on the figures provided in the December quote, Miss Y handed in her notice and claimed her benefits. She retired on 31 March 2017.

6. On 25 April 2017, NHS BSA wrote to Miss Y to inform her that she was entitled to £8,357.46 per annum from 1 April 2017, with a lump sum of £25,866.15. In response, Miss Y called NHS BSA on 28 April 2017, to dispute the pension award and was told it would be rechecked.
7. On 28 July 2017, Miss Y wrote to the Pension Service Manager at the Complaint Resolution team, as she had not received a response. They responded on 3 August 2017, and explained that they dealt with paying pensions rather than how they were calculated, however, they had passed Miss Y's letter to NHS BSA to investigate.
8. On 22 September 2017, Miss Y contacted NHS BSA as she had not received a response. She reiterated that she wanted to dispute the amount of pension she had been awarded, because the 3rd December 2016 quote had given her the impression she would be receiving more. Miss Y explained that she had decided to retire based on the information from the 3rd December 2016 quote and so she invoked the Scheme's internal dispute resolution procedure (**IDRP**).
9. On 16 November 2017, NHS BSA issued its response under Stage 1 of the IDRP. It confirmed that Miss Y joined the Scheme in August 1982 and paid contributions until 7 September 2010, when her pension rights were preserved. Following this, Miss Y re-joined the Scheme on 4 February 2013, and remained active until her retirement on 31 March 2017. As Miss Y was a member of the 1995 Section of the Scheme, her benefits were based on her total active membership and the highest pensionable pay figure during her last three years of membership. As Miss Y had preserved benefits, comparison calculations took place so that the highest result could be put into payment.
10. NHS BSA stated that estimates and annual benefits statements are based on latest pay and membership information provided by the employer, but other types of estimates were available at a potential cost, such as the December quote. When it received Miss Y's application for payment of her retirement benefits, the calculations provided lower figures. However, NHS BSA noted that the cost of living increase had not been added to her benefits up to 31 March 2017 to avoid any potential overpayment. This would be held until the employer confirmed whether the member's penultimate or pre-penultimate year was still their best year for pensionable pay. As Miss Y's benefits had been calculated according to the Scheme's regulations, NHS BSA did not uphold her complaint.
11. Miss T remained unhappy so she approached The Pensions Advisory Service (**TPAS**) for assistance.
12. On 15 December 2017, TPAS replied to NHS BSA's response to her complaint. It queried why Miss Y's pensionable membership was less in the 25 April 2017 quote, than the 3rd December 2016 quote and wanted a schedule showing the accrual of her pensionable membership. From TPAS' calculations, even allowing for the shorter membership period, whilst this slightly decreased the 3rd December 2016 quote, the

figures were still higher than the benefits that came into payment in April 2017. TPAS also asked for clarification on what the cost of living increases related to, how these were calculated and the impact of this on Miss Y's pension.

13. On 15 January 2018, NHS BSA issued its response under the Stage 2 of the IDRP. It explained that Miss Y's employer informed NHS BSA on 16 March 2017 that there had been a period of disallowed days, from 13 March 2008 to 14 April 2010. Whilst Miss Y's employer could not confirm why they were disallowed, it had previously recorded them as pensionable hours which had affected the 3rd December 2016 quote. By including the non-pensionable days, Miss Y's whole time equivalent, pensionable pay was reduced. This, in turn, meant the disallowed period of time equated to 1 year and 321 days instead of 119 days.
14. NHS BSA further explained that the pay used to work out Miss Y's pension benefits accounted for a significant number of the non-pensionable days, which then increased the quote. NHS BSA provided a break-down of the calculations used to work out the benefits that were put into payment. NHS BSA said it should have identified the error in the membership information recorded by Miss Y's employer, and apologised for this. However, it confirmed that Miss Y was in receipt of the correct level of benefits, in accordance with the Scheme regulations. There is no discretion to override these regulations, so NHS BSA could not alter Miss Y's benefits.
15. On 29 January 2018, TPAS responded to NHS BSA with a number of queries:-
 - What the number of days the disallowed period equated to, as its calculations had come to a different number.
 - Whether NHS BSA meant that by including the non-pensionable days, this reduced the overall pensionable pay, and if so, was the increase in pensionable pay for the April 2017 quote only due to this.
 - Clarification on how NHS BSA reached the number of days in relation to the disallowed period of time as these appeared to differ from what was recorded on the quotes.
 - Why there was a large difference between the April 2017 and 3 December 2016 quotes, as NHS BSA did not seem to provide a reason other than the different pensionable membership period. However, from TPAS' calculations this did not account for all of the difference.
 - Why, if the latest pay period is not used, the cost of living might not be applied and who this is decided by.
 - As the complaint was upheld in part, would NHS BSA be offering any compensation?

- Whether NHS BSA had the opportunity to note the membership period error prior to the December quote? Why did Miss Y's employer contact NHS BSA on 16 March 2017? Why was the error not picked up at an earlier stage?
16. On 9 February 2018, NHS BSA issued its second response under Stage 2 of the IDRP. It provided a breakdown of how the December quote was calculated and summarised the differences between it and Miss Y's entitlement. It noted that Miss Y received a second quote in December 2016 which, was lower than the December quote, although it had not used the correct membership period nor calculated the pension benefits for each separate period of membership. NHS BSA argued it would have been reasonable for Miss Y to have questioned this despite the incorrect factors used.
 17. With regard to the cost of living increase, NHS BSA explained that if it was immediately applied, this could create an overpayment if the last period of pay should have been used to calculate a member's benefits. In Miss Y's case, the pension's increase should apply as of 1 April 2017. If there are no amendments from the employer, the increase would be applied and backdated upon the review date. NHS BSA also confirmed that it was upon receiving the completed pension application form that it noted no contributions had been recorded for the period of 13 March 2008 to 14 April 2010, yet hours worked had been included. The employer confirmed that the disallowed days were not recorded correctly on 16 March 2017. As the contribution entries had been missing when providing the December quote, it is for this reason that NHS BSA believed it could have identified the error earlier.
 18. Lastly, although the 3rd December 2016 quote cannot be ignored, NHS BSA found that Miss Y and her employer could have questioned the 29 December 2016 quote, as it was lower than the 3rd December 2016 quote. Had this been queried, the estimates could have been reviewed prior to Miss Y's retirement. Therefore, it did not believe an award was appropriate.
 19. On 1 March 2018, TPAS raised further questions to NHS BSA. It requested clarification as to whether was the employer who had issued the 29 December 2016 quote, and if this was the case, why was it on NHS Pensions paper. TPAS also wanted confirmation on whether the 29 December 2016 quote had been requested by Miss Y, and evidence showing that it was sent. This was because until that point, TPAS had been unaware of the quote and was concerned that Miss Y had not received it. In relation to the disallowed days, TPAS highlighted that NHS BSA could have noted the error prior to the 3rd December 2016 quote, yet this did not happen and Miss Y had to pay £75, only to receive an incorrect quote.
 20. On 12 March 2018, NHS BSA wrote to TPAS to confirm that Miss Y's employer issued the 29 December 2016 quote and provided information supporting this. NHS BSA explained that employers have access to online calculators provided by NHS BSA, which allows them to provide local pensions support when members ask for estimates. However, NHS BSA was not responsible for the data the employers had input. Additionally, as the employer provided the information, there is a reasonable

assumption that the estimate was given directly to Miss Y by the employer. Nevertheless, NHS BSA agreed that it was reasonable for the £75 Miss Y paid to be returned, and requested her bank details.

21. On 29 June 2018, Miss Y complained to this Office. She explained that the quotes she had been previously provided were incorrect as NHS BSA was only using her Band 5 pay. Hence, Miss Y paid for an “accurate” quotation. On receipt of this, Miss Y made the decision to retire and gave her notice on 2 January 2017, in order to retire on 31 March 2017. Miss Y stated that she was only informed she would be receiving the lower amount after she had retired. Her calculations demonstrated that she could afford to retire based on the 3rd December 2016 quote, but as she was now receiving less pension, she has stated that she has to rely on others to financially support her.
22. Further, Miss Y said that she did not query the 29 December 2016 quote as she could see it had not used her correct pay. As such, she was not alarmed by the figures on the later quotation. Having paid for the only quote which had correctly incorporated her different pay bands, she felt justified in believing it to be correct and basing her decision on the quotation. As a result, she expected the 3rd December 2016 quote to be honoured.
23. Whilst this Office has been considering Miss Y’s complaint, she has explained that there were other factors involved in her decision to retire. Namely, her partner had already retired and that without the commitment of work it would be easier to visit her mother more often.

Adjudicator’s Opinion

24. Miss Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator’s findings are summarised below:-
 - With complaints concerning misinformation such as this, two factors need to be established: whether it was reasonable for Miss Y to rely on the misinformation and if so, would Miss Y have acted differently had she received correct information.
 - It was reasonable for Miss Y to give more weight to the 3rd December 2016 quote as the other quotes were based on an incorrect pensionable pay. However, was it reasonable to rely on this quote when forming the decision to retire, as it was made clear that this was an estimate only, even though Miss Y had paid for it?
 - The difference between what Miss Y was expecting and what she is now receiving is £90.52 a month. Although this is not insignificant, it is not so substantial that the Adjudicator thought it would have affected Miss Y’s decision to retire. It would be reasonable to expect some variation in the final figures given that they were estimates and therefore, factor this into any calculations when determining whether retirement was a realistic possibility.

- Furthermore, even though the Adjudicator did not believe it was reasonable for Miss Y to rely on the quote, she was not persuaded that Miss Y would have acted differently had she received an accurate estimate. The Adjudicator did not believe there was enough evidence to demonstrate otherwise, and had considered that Miss Y had other reasons for her decision to retire.
- As Miss Y was receiving what she was entitled to, and NHS BSA had offered to refund the £75 Miss Y had paid for the December quote, the Adjudicator did not believe NHS BSA needed to do anything further.

25. In response, Miss Y raised the following points:-

- She would only have taken early retirement if she could have afforded to, which is why she paid for the 3rd December 2016 quote. Had she been given the correct information she would have delayed her retirement.
- She should have received her final pension figures whilst she was working her notice period, giving her the chance to withdraw her notice.
- With regard to the quotation, Miss Y noted that the figures were based on current pay and pattern of service, but that exact figures could not be given until final pay and service details are known. Miss Y received the 3rd December 2016 quote based on a retirement date which was only six weeks ahead. During this time, her pay and pattern of service remained the same and NHS BSA had all the information it needed to produce a quotation. As a result, it was reasonable to have a very high confidence that the quotation was correct. Miss Y did not believe that a reasonable person would expect the pension award to be 14% lower than the quotation supplied.

26. NHS BSA provided the following response to Miss Y's comments:-

- Members do not usually receive confirmation of their pension award until they have actually retired, as this is general practice.
- As previously highlighted, the estimate was based on information held on record that was provided by Miss Y's employer. NHS BSA does not have access to an employers' pension and payroll records and so cannot verify the information provided.

27. As Miss Y did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Miss Y's comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss Y for completeness.

Ombudsman's decision

28. I understand Miss Y is unhappy with the amount of pension which she receives from the Scheme, as it is lower than the pension payment she had expected. Miss Y had formed this expectation from the 3rd December 2016 quote she paid for. However, after raising a complaint with NHS BSA, the quote was found to contain an error. NHS BSA believes it could have identified this prior to it being issued, even though Miss Y's employer did not confirm the position until 16 March 2017. Further to this, as Miss Y had to pay for this quote, and has argued that it was not unusual for her to have thought it was more accurate than the other quotes.
29. Miss Y has said that she would have only retired if she could afford to, and that the pension now provided is insufficient. As a result, she would like the figures quoted in the December quote to be honoured. However, when an error has occurred, a scheme member is only entitled to the correct benefits under the scheme's governing provisions. Based on the information provided, Miss Y is receiving the pension benefits to which she is entitled. She is only entitled to be compensated to the extent that she would have acted differently to the way that she has, had she been given the correct figures and this is dependent on whether she acted reasonably when relying on the incorrect figures.
30. Miss Y received three different pension quotes before deciding to retire, with the lowest annual pension figure being £8,015.80 and the highest, £9,443.70. However, the quote which produced the highest figures was the sole estimate that incorporated both of Miss Y's pay bands. Taking this into account, I find it reasonable for Miss Y to have used those figures for the purposes of calculating whether she could afford to retire. Nevertheless, I do not consider it reasonable for Miss Y to have relied on estimated figures with the idea that these would not change.
31. As NHS BSA has highlighted, the estimates produced are based on the information provided by the employer at that time. Whilst the December quote may have been based on a retirement date six weeks ahead, with no expected variance in pay, NHS BSA would not have verified the information it held until Miss Y made an application for her benefits. This is confirmed in the estimated benefit statements, "Exact figures for your retirement benefits cannot be given until such time as your final pay and service details are known and an application for benefits has been made in accordance with the Scheme rules."
32. In addition, the member has a responsibility to make sure that the information provided on their benefit statements is correct, such as the retirement date, date of birth and total membership. Miss Y received two statements which listed her membership up to 13 January 2017. However, the 23 June 2016 benefit statement stated this was 21 years and 362 days, whereas the December quote had the membership recorded as 21 years and 337 days. I would have at least expected a query about this difference, had Miss Y checked her membership records.

33. Miss Y has said that the monthly difference of £90.82 means that she would not have been able to afford to retire. I understand that based on the figures provided on 25 April 2017, Miss Y receives approximately £696 a month, so I appreciate that the £90.82 reduction would have an effect. I have also noted that a 14% change was unexpected for Miss Y and that she believes a reasonable person would not expect this. However, I must take into account that the figures provided to Miss Y were never guaranteed.
34. Further to this, I have also considered Miss Y's point about confirmation of her pension entitlement, and when she should have received this. It is not uncommon for members to receive this confirmation until after they have retired. Miss Y has said that had she received the confirmation during her notice period, she would have reversed her decision to retire. Whilst this may have been the case, there is no information confirming that Miss Y would have been able to withdraw her retirement notice and continue working in the role that she held at the time. Further to this, I cannot see that Miss Y was given the impression from NHS BSA, that the entitlement confirmation would have been issued at an earlier date, so I do not consider this to be an error.
35. Even if I were to find that it was reasonable for Miss Y to rely on the information provided, there is no supporting information demonstrating that the amount Miss Y is receiving, was insufficient for her retirement. On the balance of probabilities there is insufficient evidence for me to conclude that Miss Y would have acted differently. Taking this into account, I find NHS BSA's offer to refund the £75 Miss Y spent in requesting the 3rd December 2016 quote, is reasonable and NHS BSA is not required to do anything further.
36. I do not uphold Miss Y's complaint.

Anthony Arter

Pensions Ombudsman
14 December 2018