

## Ombudsman's Determination

Applicant	Dr D
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. I do not uphold Dr D's complaint and no further action is required by NHS BSA.

## Complaint summary

2. Dr D has complained that as a result of receiving incorrect statements that overstated her Scheme entitlement, she stopped making contributions to her self-invested personal pension (**the SIPP**).
3. Dr D has identified her loss as tax relief, of approximately £30,000, that she would have received on SIPP contributions she would have made if she had received correct benefit statements.

## Background information, including submissions from the parties

4. In August 2011, in response to an enquiry from Dr D about her membership, NHS BSA sent her a membership statement. NHS BSA stated that her employers were responsible for updating and correcting her benefit record. It also provided Dr D with a form to complete and send to her employers if she thought that anything was missing or incorrect in her membership statement.
5. In February 2018, Dr D noticed that there might be an error in her employment record after she compared her statement to a colleagues. She contacted NHS BSA to ask for her employment record to be checked.
6. NHS BSA confirmed that her employment record was incorrect and consequently, so were the benefit statements that it had sent her. It said:-
  - Dr D had been recorded as both a trainee GP and a principal practitioner at the same time. Once Dr D had qualified and become a principal practitioner her trainee employment record should have been closed.

- As a result of the error, her employment records had to be updated and a revised benefit statement would be issued.
- The revised benefit statement would show a lower Scheme entitlement than previously quoted.

7. Dr D complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She said:-

- She had contacted NHS BSA as she believed there was an error in her employment record.
- NHS BSA had made an error in July or August 1992, that had remained uncorrected until she had contacted it.
- As a result of the error her benefit statements had overstated her entitlement.
- In recent years, and based on the incorrect statements, it appeared likely that she would breach the lifetime allowance (**LTA**). The corrected statements now showed that this was unlikely.
- As a result of receiving incorrect statements she had stopped making personal pension contributions to her SIPP to avoid exceeding the LTA.
- This meant that she had lost out on tax relief and she was seeking compensation for this.

8. In response, NHS BSA said:-

- It had received incorrect information from Dr D's employers, and this had led to her Scheme entitlement being overstated.
- It demonstrated that if Dr D had relied on the incorrect estimates it had provided in February 2017, December 2017 and February 2018, she was correct to believe that it was likely that she would exceed the LTA.
- The corrected estimates showed that it was now unlikely that she would exceed the LTA.
- It could not uphold the complaint as it could not establish if the combined value of Dr D's Scheme entitlement and the SIPP had, or would, exceed the LTA.

9. Dr D responded to NHS BSA and said:-

- She was previously told that NHS BSA had received the correct information but had incorrectly recorded it.
- She had contributed £25,000 each year to the SIPP in the tax years 2012 to 2013 and 2013 to 2014. She had not made any further contributions as there was a risk that she would breach the LTA.

- There was also a possibility that the LTA would be reduced in the future.
- It had been confirmed in NHS BSA's response that if the statements had been correct, it would have been clear that she would not have breached the LTA.

10. NHS BSA responded and said:-

- It acknowledged that it had sent incorrect statements. However, these were sent in good faith based on the information it held at the time.
- It provided two copies of her employment record to show the changes that had been made since receiving the correct information.
- The employment records showed that Dr D incorrectly had two employment posts running concurrently.
- The estimate Dr D received on 22 May 2018 was based on her pensionable pay that she had received up to March 2016 only. Dr D could not have used the estimate to establish whether she would have exceeded the LTA between 2016 to 2017 and 2017 to 2018.
- The incorrect statements were within the tax-free limits of the LTA and would have allowed Dr D to continue making SIPP contributions. This was subject to any investment growth not causing her to exceed the LTA or her exceeding the Annual Allowance (AA) limits and incurring an AA charge.
- Depending on Dr D's AA position, she may have been able to make retrospective contributions to the SIPP to use her AA from previous tax years.

11. Dr D has made the following additional comments:-

- She believed the mistake on her benefit statements resulted from an internal error by NHS BSA. NHS BSA has not provided any evidence to show that it received incorrect information.
- Her decision to stop contributing to the SIPP was based on the likelihood of her breaching the LTA in the future.
- If she had received correct statements, she could have made contributions to the SIPP in the 2014 to 2015 and 2015 to 2016 tax years.
- She made a £25,000 SIPP contribution in the 2018 to 2019 tax year.
- NHS BSA has only been able to provide joiner forms. This does not demonstrate that NHS BSA was not subsequently informed when her employment ended.
- There was no evidence to show why the duplicate entries stopped in March 1999.

12. NHS BSA has provided the following additional comments and information:-

- Dr D's employer provided two joiner forms in relation to Dr D's employments one as an officer and another as a practitioner.
- Before Dr D instigated the investigation into her employment NHS BSA's records showed that: she was employed as a practitioner from 1 August 1992 to 31 March 1999; and she was employed as an officer from 1 February 1992, and this employment was continuing. This information was incorrect, and it was confirmation from Dr D that allowed NHS BSA to correct her record.
- There was no record of how NHS BSA was informed of Dr D's practitioner employment ending in March 1999. It could only assume that it was informed electronically.
- The correct position was that Dr D was employed as an officer between 1 February 1992 and 31 July 1992; and as a practitioner from 1 August 1992, and this employment was continuing.

### **Adjudicator's Opinion**

13. Dr D's complaint was considered by one of our Adjudicators who concluded that there was no maladministration by NHS BSA. The Adjudicator's findings are summarised below:-

- NHS BSA agreed that Dr D was sent incorrect benefit statements, so there was no dispute that there had been an error made in her benefit records.
- The benefit statements NHS BSA had sent to Dr D were based on the information it had received from her employers. The evidence showed NHS BSA received joiner forms showing Dr D was employed concurrently in officer and practitioner employment. Dr D's employer was responsible for informing NHS BSA that she was no longer in officer employment.
- As NHS BSA had received incorrect information from Dr D's employer, and only received the correct information in February 2018, it could not be held responsible for the incorrect statements.
- The membership statement NHS BSA sent to Dr D in August 2011, informed her that it was her employers' responsibility to provide NHS BSA with the correct information. Dr D was also provided with a form to complete and return to her employer if she thought there were any errors on the statement. The statement in August 2011 incorrectly showed Dr D as being in two different employments at the same time. Dr D would have known in 2011 that she was not concurrently employed and so ought reasonably to have identified the error much sooner than she did and certainly before she decided to stop making contributions to the SIPP.

- NHS BSA identified the error and updated Dr D's record to correctly reflect her employment history, following Dr D's query about her membership record in 2018, in a reasonable and timely manner.
14. Dr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
15. Dr D provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised. Dr D has said:
- NHS BSA received correct information from her employers showing that she was employed as a GP trainee with officer status from 1 February 1992 and that she was employed as a principal practitioner with practitioner status from 1 August 1992.
  - NHS BSA had not provided any evidence to show that her employer did not inform it that she had ceased her officer status employment. She believed that further errors on the August 2011 statement indicate that NHS BSA was responsible for the errors and not her employers.
  - NHS BSA should not be treated as a separate entity to her employers as they are both part of the same organisation.
  - She does not agree that it was reasonable for her to have identified that the employment record on her 2011 statement was incorrect. The statement was a complex document and it was not reasonable to expect her to identify all errors.

### **Ombudsman's decision**

16. Dr D contends that NHSBSA should not be treated as a separate entity to her employers. NHS BSA is an executive non-departmental public body of the Department of Health and Social Care whereas GP's are independent contractors to the NHS. NHS BSA is therefore an entirely separate entity to Dr D's employers albeit both are linked to the NHS. A failure of one organisation cannot therefore be transferred to the other simply because of the common link.
17. Dr D has said that NHS BSA has not provided any evidence to show that her employer did not inform it that she had ceased her officer status employment in July 1992. It would be difficult for NHS BSA to provide substantive evidence that it did not receive a particular piece of information. Dr D is still a member of the Scheme and so I would expect NHS BSA to have retained any evidence received in relation to Dr D's employment. Given the lack of evidence of such information having been received by NHS BSA I find, on the balance of probabilities, that NHS BSA were not informed that Dr D's employment as an officer had ended in 1992.
18. The August 2011 statement informed Dr D that her employers were responsible for updating and correcting her pension record. Dr D was also provided with forms to

complete and send to her employer if she thought that her record was incorrect. Given the importance of her pension record, and the prompt to provide her employer with any discrepancies, it is reasonable to expect Dr D to have checked the statement thoroughly to ensure it correctly reflected her employment history.

19. NHS BSA provided Dr D with statements based on the information it received from her employers. The information NHS BSA received was found to be incorrect and there is no evidence to suggest that it received the correct information from her employers before 2018. Furthermore, Dr D had the opportunity to review the statements provided by NHS BSA and identify any errors in the information that it held in 2011.
20. I do not uphold Dr D's complaint.

**Anthony Arter**

15 October 2020