

## Ombudsman's Determination

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

## Outcome

1. I do not uphold Dr A'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. Dr A has complained that the level of pension benefits that he is receiving is less than he was expecting. He relied on the incorrect retirement statements when making a decision to retire and when he discovered that the pension would be less than expected, he had to continue to work for longer than he had planned.

## Background information, including submissions from the parties

4. Dr A was a member of the 2008 Section of the Scheme having previously moved his benefits from the 1995 Section of the Scheme.
5. In July 2013 Dr A asked for retirement statements from NHS BSA. NHS BSA responded by sending a statement directly to his home address on 7 September 2013. Within this statement, NHS BSA stated that Dr A's annual pension would be £41,334.20 with a pension commencement lump sum (**PCLS**) of £73,524 – this was based on pensionable service of 21 years and 229 days. If Dr A wanted to maximise his PCLS, he would have to give up some of his pension for a higher PCLS, in which case he would receive a reduced pension of £30,510.77 and an enhanced PCLS of £203,405.14.
6. Dr A negotiated with his employer that he would retire and continue to work on a reduced basis on a one year fixed term contract, terminable on three months' notice. The contract was signed on 28 November 2013. Dr A elected for an enhanced PCLS with a reduced pension.

7. In December 2013, NHS BSA wrote to Dr A confirming what his pension would be. His reduced pension was £29,488.95 and the enhanced PCLS was £136,656. It would be worth noting that the pension before commutation was £40,876.95.
8. Dr A contacted his employer in January 2014 asking if he could continue working longer because of an 'appalling mistake' in the September estimate which had left his commitments and plans for retirement in total disarray. He stated, 'there are commitments I have made which I cannot go back on. I am not quite sure how I am going to finance these undertakings. If I could continue working longer that may to some extent ease the burden.'
9. Dr A then complained to NHSBSA that he based his retirement plans on the incorrect estimate. He said he was given assurances by the NHS BSA helpline that the pensions benefits payable would not vary too much from the estimated figures provided on 7 September 2013. The matter was considered through the Scheme's internal dispute resolution (**IDR**) procedure.
10. NHS BSA did not uphold his complaint because, while they accept that the September 2013 statement was incorrect, this was not as a result of their maladministration. The September 2013 statement was based on a reckonable pay of £121,199.10, a figure that was supplied by Dr A's employer. It later transpired that the figure the employer had provided had included pay arrears, which it had assigned to one year instead of allocating the arrears to their respective years. maladministration. In December 2013, NHS BSA calculated the pension based on reckonable pay of £99,920, which was the reason why a different pension was paid compared to what was previously quoted.
11. Dr A says that he relied on the statement of September 2013 in order to agree to purchase a property in Sri Lanka and also he made promises to his brother and brother in law to maintain them financially by paying them £300 a month.
12. NHSBSA question whether it was reasonable for Dr A to rely on the estimate without further enquiry. They point out that the estimate showed a substantial increase in pension benefits of around 36% in 6 months. The estimate clearly showed a reckonable pay amount of £121,199.10. They maintain Dr A should have realised that he had not had earnings at that level. The increase was disproportionate to an amount that could be provided by pensions increase.
13. They state that when he phoned NHSBSA to question whether the estimate would be accurate enough to make a decision about exchanging pension for extra lump sum he did not mention that the estimated benefits had dramatically increased. Had he done so NHS BSA could have undertaken a review. They point out that he is back in full time employment in receipt of pension and a full time salary, and has not in fact retired on the basis of the incorrect statement.
14. The BMA made submissions on Dr A's behalf. They say the September 2013 figures encouraged him to decide to cease working and return to Sri Lanka to spend more

time with his family. It was his intention to give up work completely as soon as possible on the back of this illustration. He contacted NHS BSA to confirm the accuracy of the figures and was informed they were 'fairly accurate' and there was no suggestion that an error had been made. Based on this he decided to take a larger lump sum because it allowed him to provide financial assistance for his family. He entered into agreements to purchase property in Sri Lanka with his brother and his family, in addition to providing a monthly maintenance figure out of this amount totalling £300 per person per month to both his brother and brother in law. They were expecting this money to be fulfilled and as such can be seen to be financially dependent on this promise.

15. Believing he could afford these commitments Dr A handed in all of the appropriate forms and notices in preparation for his retirement. He was distraught when notified of the lower pension award. There was no explanation as to the drop in these figures. Naturally by this stage it was too late to alter his plans for retirement. Had he been informed correctly he would have been able to remain in his post and accrue further benefits and late retirement enhancements.
16. The BMA say it is unfair to pass responsibility for noticing a disproportionate increase in his reckonable pay to Dr A. They point out that the calculation of reckonable pay is complicated and Dr A is a lay person. If NHS BSA are expecting someone without prior knowledge of the calculations to notice the error, then this is something that they should have been aware of as well.
17. The BMA say that Dr A has had to return to full time employment indefinitely in order to maintain his promises and commitments made on the basis of the higher pension figures he was under the impression he would receive. It is a part of his nature and his culture to follow through with promises made, and not to lose face or have his integrity questioned by reneging on these promises. He calculates he would have to work until 76 to get the benefits he believed he would receive and is now not certain he will be able to fulfil the commitments he has entered into which is of severe distress to him.

## **Adjudicator's Opinion**

18. Dr A'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 briefly below:
  - The error was caused by Dr A's employer providing NHS BSA with incorrect information.
  - Dr A mitigated his losses by continuing to work after his retirement.
  - Dr A entered into financial commitments, but there is no evidence to say that he would not continue to support his family members and also there is no evidence to

support Dr A's claim that he agreed to purchase a property in Sri Lanka on the strength of the September 2013 retirement statement.

19. Dr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr A provided his further comments which 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 Dr A for completeness.

### **Ombudsman's decision**

20. It is admitted that NHS BSA sent Dr A an incorrect statement in September 2013 and there is no dispute that the December 2012 figures are correct.
21. It is an established legal principle that the provision of an incorrect pension benefit estimate does not create a legal entitlement for the recipient to receive those higher (incorrect) benefits. Dr A has no entitlement to the higher benefits quoted. His benefits in the scheme can only be calculated using the correct method and NHS BSA cannot increase his benefits to pay him a higher pension and lump sum in accordance with the incorrect quotations. I find that there was a loss of expectation but no financial loss flowing from the statement.
22. Dr A says that NHS BSA should have realised that the figures supplied by the employer were wrong based on previous figures supplied by them. I do not consider that NHSBSA were to blame for the error made in this case. Under the Scheme rules the employer has an obligation to declare employee pay. NHS BSA were not in a position of better knowledge on the facts. The only parties with direct access to pay information were the employer and Dr A.
23. Dr A says he relied on the enhanced PCLS stated in September 2013 to make financial decisions, which he now has to finance with a lower enhanced PCLS. I accept that he has less money than he was expecting but do not find that he acted in reliance on the September figures in making his final decisions.
24. No evidence has been produced to show that Dr A only decided to support his family members in Sri Lanka because of the enhanced PCLS stated in September 2013. Further, there is no evidence to show that since he received a lower than expected PCLS, he is unable to support his family members in Sri Lanka. With regards to the property he agreed to purchase in Sri Lanka for his brother, there is no evidence to show that he only decided to buy the property after receiving the September 2013 statement. Nor is there any evidence that the transaction could not be stopped once the correct figures were known.
25. I accept that the discovery that the pension would be lower than was initially expected caused distress and inconvenience. However, as NHS BSA were not responsible for the error, there is no reason they should compensate Dr A for the loss of expectation he suffered.

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26. Therefore, I do not uphold Dr A's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman

7 September 2016