

## Ombudsman's Determination

Applicant	Mrs Y
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	North Lancashire Doctors Ltd ( <b>NLD</b> )

## Outcome

1. I do not uphold Mrs Y's complaint and no further action is required by NLD.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs Y has complained that an error in the information that NLD submitted to NHS Business Services Authority (**NHS BSA**) (formerly NHS Pensions) resulted in NHS BSA providing an overinflated retirement quotation on 7 November 2012. Mrs Y relied upon this quotation and decided to retire.
4. Mrs Y raised a complaint with NHS BSA which was determined by the previous Ombudsman in May 2015. The previous Ombudsman did not uphold the complaint, however it was noted that NHS BSA had said that incorrect information was provided by her employer, NLD, leading to the error. Nevertheless the determination stated, "since Mrs Y should have noticed the error, then even if her employer was responsible for it, I do not think that she should expect significant compensation".

## Background information, including submissions from the parties

5. In 1999, Mrs Y joined the Scheme whilst working part time for Meadowside Medical Practice (**Meadowside**), where she continued to work until her retirement on 1 February 2014. Concurrently to her employment with Meadowside, Mrs Y worked part time for NLD in the years leading up to her retirement.
6. On 7 November 2012, NHS BSA provided Mrs Y with a quotation of retirement benefits. In the personal details section of the quotation, membership of 12 years 61 days, and pay of £63,070.23 per annum are shown. This resulted in a projection to Normal Pension Age (**NRA**) of £11,108.57 per annum with a lump sum of £59,510.20. Mrs Y's correct combined pensionable salary in her final year was £15,669.75.

7. The following information was also given:

“Whilst we have made every effort to ensure that this quotation is accurate, you should be aware that this statement is an estimated quotation only...

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...”

8. On 10 March and 30 September 2014, in response to the complaint against them, NHS BSA said that NLD had provided incorrect working hours and salary information, which caused NHS BSA to calculate a higher pensionable pay figure used in the quotation. Despite the cover letter to the quotation stating that it was based on pay information last updated on 31 March 2012, NHS BSA said that the November 2012 estimate was based on the pay figure NLD had provided for the year ending 31 March 2011 of £51,287.57.
9. NLD has provided this office with a copy of the information that it provided to NHS BSA for the years ending 31 March 2011, 2012 and 2013. NLD informed NHS BSA that Mrs Y had worked 187 hours for the period from 1 April 2010 to 31 March 2011 and received a gross pay figure of £5,128.57. This information is a true representation of the hours worked and pay received.
10. In late 2013, when NHS BSA received Mrs Y's retirement application they requested final pensionable pay and membership details from Mrs Y's employers, including NLD, for the period beginning 1 April 2013 up to that date. NLD submitted the information on 6 December 2013 - 339 hours worked and pensionable pay of £4,090.43. On receipt, NHS BSA realised that the total hours worked at NLD and Meadowside combined exceeded her maximum whole time equivalent. Whole time equivalent hours are the standard hours that you would work if employed on a full time contract. The standard hours vary depending on the type of employment. Hours worked in excess of the whole time equivalent are not pensionable and any contributions made for excess hours must be refunded.
11. On 23 December 2013, NHS BSA instructed NLD to reduce the hours that they had classed as pensionable from 339 to 165 for that period, to bring her total hours at both employers in line with her whole time equivalent, and to arrange a refund of contributions for the hours in excess of 165. A total of 174 hours' worth of contributions were refunded to Mrs Y by NLD with respect to her final year's employment.
12. Mrs Y's position is shown below:-
  - Mrs Y received a lump sum of approximately £13,000 and an annual pension of approximately £1,800. Significantly less than that quoted on 7 November 2012.
  - Mrs Y maintains that, if she had been provided with a correct quotation in 2012, she would have continued to work with NLD and Meadowside until her State Pension became payable.

- Mrs Y feels she has suffered significant distress and inconvenience as a result of the incorrect pay information provided by NLD.

13. NLD's position is shown below:-

- NLD maintain that the scheme annual returns and the information submitted to NHS BSA on 6 December 2013 were correct. NLD say that it could not have predicted that Mrs Y had exceeded the whole time equivalent hours until NHS BSA told it.
- On 17 January 2014, NLD updated the NHS BSA online system with the reduced pensionable hours and corresponding pay. NLD said that this was the first time that NHS BSA had informed it that it needed to adjust hours. NLD say that prior to December 2013, NHS BSA would request Meadowside to make the adjustment where Mrs Y exceeded the maximum whole time equivalent.

### **Adjudicator's Opinion**

14. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by NLD. The Adjudicator's findings are summarised briefly below:-

- There is no dispute that an incorrect quotation was produced on 7 November 2012. However, the previous Ombudsman has determined that Mrs Y should have noticed the error, and that it was not reasonable for her to have relied upon the estimate. As a result no redress for financial loss can be provided. The Adjudicator considered whether it was appropriate to recommend that NLD pay Mrs Y redress for the non-financial loss she has suffered. In order to do this maladministration by NLD must be found.
- The covering letter of the 7 November 2012 estimate states that it was based on information provided by the employers on 31 March 2012. However, NHS BSA have since said it was based on pay information updated on 31 March 2011. NLD has provided a copy of the information it submitted on both 31 March 2011 and 2012. It also confirmed that it had not been contacted by NHS BSA at this point to adjust Mrs Y's hours so that the total hours did not exceed the maximum whole time equivalent.
- The information submitted by NLD, as shown on the copies provided, was an accurate representation of the hours that Mrs Y had worked, and the contributions made to the Scheme during the 2011/2012 periods. As NHS BSA did not inform NLD that Mrs Y was exceeding her whole time equivalent, and the evidence supports NLD's position that it provided accurate pay and hours information, the Adjudicator did not make a finding that NLD's information was the cause of Mrs Y receiving a overinflated retirement quotation. As there is no evidence that NLD provided incorrect information, maladministration has not been found and no non-financial redress was recommended.

15. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs Y for completeness.

### **Ombudsman's decision**

16. Mrs Y has said that she has been treated unfairly, in that she was provided with an overinflated pension estimate. Mrs Y's understanding is that this was due to incorrect information provided by NLD, and the error has led to financial difficulties for her. Mrs Y says that, had she been provided with the correct information, she would have continued working and paying into the Scheme. Mrs Y feels that she should be given compensation for this and the distress and inconvenience caused.
17. In order for redress to be provided for financial loss in a mis-information case, one of the criteria that must be satisfied is that it must have been reasonable for the member to have relied upon the incorrect information. The matter of whether it was reasonable for Mrs Y to rely on the November 2012 estimate was covered by the previous Ombudsman in his determination with respect to Mrs Y's complaint against NHS BSA. The Ombudsman determined that it was not reasonable for Mrs Y to rely on the quotation, and that she should have noticed the error. The Ombudsman's determination is final and binding, therefore I cannot look at this aspect of the complaint again. This means that no redress for financial loss can be directed.
18. To direct any redress from NLD, maladministration by them must be found. I agree with the Adjudicator that there is no evidence of maladministration by NLD. The evidence suggests that NLD provided NHS BSA with the correct information at all times. I note that the figure NHS BSA say that NLD provided on 31 March 2011 of £51,287.57 holds an extra digit when compared to that shown in the evidence provided by NLD of £5,128.57. That is strongly suggestive of a keying error in the course of a manual adjustment. NHS BSA have said that this may have been necessary in this case. However, neither NLD or NHSBSA can explain when this extra digit was inserted. On balance the evidence available does not suggest that it was NLD's error.
19. Therefore, I do not uphold Mrs Y's complaint against NLD.

**Karen Johnston**

Deputy Pensions Ombudsman  
18 September 2017