

## Ombudsman's Determination

Applicant	Miss R
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

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

## Complaint summary

2. Miss R has complained that she relied on misinformation provided by NHS BSA in making a decision to accept voluntary redundancy, causing her financial detriment.

## Background information, including submissions from the parties

3. Appendix A of the 1995 NHS Pension Scheme Regulations (**the 1995 Regulations**) provides that:-

### **"U3 Accounts and actuarial reports**

...

- (1) In respect of a member, an employing authority must keep a record of all-
  - (a) contributions paid under regulations D1, Q6 and Q8;
  - (b) contributions due under regulations D1, Q6 and Q8 but unpaid;
  - (c) contributions paid under regulation D2;
  - (d) contributions due under regulation D2 but unpaid;
  - (e) hours, half days or sessions constituting part-time pensionable employment for the purposes of regulation R5;
  - (f) pensionable pay..."

4. On 4 October 2007, Miss R commenced employment with Waldoc Community Benefit Society (**Waldoc**) and joined the 1995 Section of the Scheme (**the 1995 Section**).
5. On 5 September 2011, Miss R left Waldoc.
6. On 2 October 2015, Miss R commenced employment with Nestor Primecare Services (**Nestor**) and continued to accrue benefits in the 1995 Section.
7. On 16 December 2018, Miss R left Nestor.
8. On 17 December 2018, Miss R commenced employment with Malling Health and continued accruing benefits in the 1995 Section.
9. On 1 April 2019, Miss R transitioned into the 2015 Section of the Scheme (**the 2015 Scheme**).
10. On 11 June 2019, Miss R downloaded an Annual Benefit Statement (**the June 2019 Statement**) via the Scheme's online member portal. It quoted benefits including an annual pension of £3,696.86 and a £11,090.59 lump sum based on pensionable pay of £67,173.90 updated on 31 March 2017.
11. A disclaimer in the June 2019 statement stated:-

“Please be aware this is an estimate and shown for guidance only. You should check the amount of Pensionable Pay quoted is consistent with your current pay or what would be the full-time equivalent pay if you currently work part-time. If the figure is significantly different you should contact your employer.”
12. On 12 July 2019, Malling Health wrote to Miss R confirming that there was a risk she could be made redundant. It advised that a final decision would be made on any employment changes following a consultation process which was due to end on 31 July 2019.
13. On 16 July 2019, Miss R attended a consultation meeting with Malling Health during which she asked to be considered for voluntary redundancy.
14. On 22 July 2019, Malling Health wrote to Miss R and confirmed that her request for voluntary redundancy had been accepted, subject to her accepting some terms that were set out in the letter. A severance payment totalling £8,227.75, including 11 weeks paid notice of £3,291.12, was stated.
15. Malling Health also said that Miss R was required to attend a second consultation meeting on 26 July 2019 to discuss the matter in greater detail.
16. On 23 July 2019, Miss R telephoned NHS BSA and asked for an estimate of her pension entitlements following redundancy (**the redundancy estimate**). Miss R says the call handler confirmed that her retirement benefits would be an annual pension of £3,696.86 plus a lump sum of £11,909.59.

17. The call handlers written summary of the call states:

“called regarding what happens to her pension if shes [sic] made redundant.”
18. NHS BSA says that Miss R was told that her pension record had not been updated since March 2017. So, her pension entitlements could change from any pension figures previously quoted; and she should contact Malling Health regarding this point.
19. On 26 July 2019, Miss R attended a second consultation meeting with Malling Health during which she confirmed her decision to take voluntary redundancy.
20. On 31 July 2019, Miss R left Malling Health, having accepted voluntary redundancy.
21. On 1 August 2019, Miss R telephoned NHS BSA to chase the redundancy estimate. The call handler’s summary of the call states:

“adv cons still not been updated and to contact ea again. Given pension contact”.
22. On 6 August 2019, Malling Health submitted form AW295 to NHS BSA asking for Miss R’s redundancy estimate. Malling Health also confirmed Miss R’s full-time equivalent pensionable pay figure as £21,990.35.
23. On 16 August 2019, Miss R telephoned NHS BSA. The call handler’s summary of the call states:

“member was advised has been giving [sic] the wrong the [sic] forecast. Advised conts haven’t been updated and an email was sent on 12<sup>th</sup> August.”
24. On 21 August 2019, Miss R again telephoned NHS BSA to chase her redundancy estimate. The call handler’s summary of the call states:

“wanted to see if conts had been updated – advised not yet – email sent to ea on 12/08 – sent info about pension in email.”
25. On 28 August 2019, Malling Health updated Miss R’s member record.
26. On 1 October 2019, NHS BSA sent a redundancy estimate to Malling Health based on Miss R’s updated pensionable pay figure. The benefits quoted were a pension of £1,794.64 a year plus a lump sum of £5,395.92.
27. On 21 October 2019, Miss R telephoned NHS BSA. A transcript of the call states Miss R confirmed her redundancy from 31 July 2019 and said she was considering retirement, but that Malling Health had not confirmed the benefit details.
28. In November 2019, Miss R commenced employment with a new employer.
29. Miss R says she telephoned NHS BSA in November 2019 and the call handler said that an error had been made. Incorrect retirement figures had been provided during the previous call on 23 July 2019, when an annual salary of around £67,000 was incorrectly used as the basis for calculating her retirement benefits.

30. On 24 June 2020, Miss R complained under stage one of the Scheme's Internal Disputes Resolution Procedure (**IDRP**). Miss R said:-

- She asked for a redundancy estimate in July 2019, because at the time she had been offered the option of voluntary redundancy. The requested figures were for immediate retirement benefits.
- The June 2019 Statement quoted a pension of £3,696.86 per year and a lump sum of £11,090.59. She made financial plans based on this lump sum figure plus a voluntary redundancy severance package offered by Malling Health. The financial plan involved paying off some outstanding finance on her car and the balance on a credit card. She then intended to fund her lifestyle through the residual pension and a new part-time job.
- She decided to accept the voluntary redundancy offer from Malling Health and was put on paid leave for three months before her employment terminated on 31 October 2019. During this period she contacted NHS BSA on several occasions to check whether Malling Health had paid the employer contribution arrears.
- NHS BSA eventually confirmed that the contribution arrears had been paid and that the June 2019 Statement was incorrect; the benefits would, in fact, be lower than quoted in the June 2019 Statement.

31. On 18 July 2020, Miss R resumed employment with Malling Health.

32. On 3 September 2020, NHS BSA wrote to Miss R in response to her complaint under stage one of the IDRP. NHS BSA said:-

- No recording of the telephone call on 23 July 2019 was available, as recordings were only held for six months. So, it would not be possible to clarify what Miss R was told regarding her pension entitlement following redundancy.
- NHS BSA's call handlers were not able to calculate a redundancy estimate. So, there was no evidence that any incorrect information had been provided to Miss R regarding her pension entitlement during the telephone conversation.
- On 6 August 2019, a request was received from Malling Health for a redundancy estimate. Miss R subsequently telephoned NHS BSA on several occasions to chase for this information. The redundancy estimate was sent to Malling Health on 1 October 2019, and it did not quote the overstated figures to which Miss R had referred.
- There were no recordings held of any telephone calls with Miss R relating to her redundancy statement, since more than six months had elapsed.
- For these reasons, Miss R's complaint was not upheld.

33. On 21 September 2020, NHS BSA received an appeal from Miss R under stage two of the IDR. In summary Miss R said:-

- It was unreasonable of NHS BSA to retain recordings of important telephone calls she had made for only six months. Based on some of those conversations she had made the decision to accept voluntary redundancy.
- When she telephoned NHS BSA in November 2019, the call handler said that an error had been made. Incorrect retirement figures had been provided during the telephone call on 23 July 2019, when an annual salary of around £67,000 was used as the basis for calculating her retirement figures.
- She would not have accepted voluntary redundancy and left the Scheme, had she been correctly informed that the retirement benefits would only be around £25 per week, when her mortgage was £325 a month.

34. On 3 November 2020, NHS BSA wrote to Miss R in response. NHS BSA said:-

- Malling Health was required to record the date a member joined and left pensionable employment, their pensionable pay, total hours worked, and any changes to their hours. Malling Health must then submit the details to NHS BSA in accordance with the 1995 Regulations.
- NHS BSA did not have access to an employer's payroll systems and could not validate any information it provided. So, a member was required to check their pension and membership details and liaise with their employer or NHS BSA to resolve any issues.
- The June 2019 Statement incorrectly quoted an annual pension of £3,696.86 plus a lump sum of £11,090.59. However, a note was included in the statement informing Miss R that she should check the pensionable pay figure quoted, and contact Malling Health if there were any issues or errors.
- When Miss R telephoned NHS BSA on 23 July 2019, the call handler would not have been aware that her service record was incorrect. However, Miss R was told that her pension record had not been updated since March 2017. So, her redundancy benefits could change and she should contact Malling Health directly to rectify this issue. NHS BSA's policy was to only retain call recordings for six months. But notes were made at the time of a call to record a broad outline of any enquiry.
- On 6 August 2019, Malling Health requested a redundancy estimate, by that date Miss R had already decided to take voluntary redundancy. This was before any retirement figures had been confirmed by NHS BSA. It was also on 6 August 2019 that NHS BSA became aware that the pensionable pay figure quoted in the June 2019 Statement was incorrect. This was due to Malling Health having confirmed Miss R's full-time equivalent pensionable pay as £21,990.35.

- Redundancy pension benefits under the Scheme were only payable if certain criteria were met. In that regard, a member's age, and any terms and conditions of their employment were considered. So, it was unreasonable for Miss R to rely on the June 2019 Statement in deciding to take voluntary redundancy.
- When Miss R telephoned NHS BSA in November 2019, the call handler had the benefit of notes that had been made while calculating the redundancy statement requested by Malling Health. These notes showed that incorrect hours had previously been held on Miss R's record which had subsequently been updated.
- In calculating Miss R's redundancy estimate, it was also identified that her record with Nestor for the Scheme year 2016/2017 contained errors. It was these errors that resulted in the June 2019 Statement containing overstated figures.
- Miss R ought to have recognised that the retirement benefits quoted were incorrect due to the overstated salary of £67,173.90 quoted in the June 2019 Statement.
- For these reasons, Miss R's complaint was not upheld.

### **Miss R's position**

35. She decided to take voluntary redundancy based on the June 2019 Statement which set out figures including a lump sum of £11,090.59 plus an annual pension of £3,696.86. Had this misinformation not been received, she would have remained in her existing role, which was not at risk of being made compulsorily redundant. At the time of her voluntary redundancy, she had been contracted to work 34.5 hours per week for pay of £8.67 per hour.
36. Before accepting voluntary redundancy, Malling Health had advised her to obtain a redundancy estimate from NHS BSA. NHS BSA was incorrect in stating that redundancy estimates are only ever sent to an employer, since she had received one.
37. She also received confirmation of the figure quoted in the June 2019 Statement from NHS BSA during the telephone call on 23 July 2019. It was unreasonable of NHS BSA to retain recordings of important telephone calls she had made for only six months. This resulted in no evidence of NHS BSA's error in confirming her retirement figures following voluntary redundancy.
38. NHS BSA was responsible for the administration of her pension. So, it was unreasonable of NHS BSA to hold Malling Health responsible for providing the incorrect information that was subsequently used in calculating the figures quoted in the June 2019 Statement. NHS BSA incorrectly increased her pensionable pay figure to £67,173.90. It was irresponsible of NHS BSA not to complete any checks before confirming the related benefit details in the June 2019 Statement.
39. NHS BSA concluded that her salary details had not been updated since 31 March 2017 at the time she downloaded the June 2019 Statement, and that she should not have relied on that information. However, that is irrelevant. She naturally assumed

that when some employer contributions arrears were paid, the eventual retirement benefits would be larger than those quoted.

40. She has never worked in the pensions industry, so it was unreasonable of NHS BSA to suggest it was her responsibility to check that the pensionable pay figure quoted in the June 2019 Statement was consistent with her actual pensionable pay.
41. She resumed employment with Malling Health in July 2020 and now works more hours than before taking voluntary redundancy.

### **NHS BSA's position**

42. The June 2019 Statement reflected the last salary details that had been received for Miss R. Since the quoted benefits were not guaranteed, it was unsafe for Miss R to use this information in making any decisions regarding voluntary redundancy.
43. The amount of pension available to claim following being made redundant depends on the member's contract of employment and the terms and conditions that it sets out. Members must use their severance payment to meet the cost of paying pension benefits earlier than their normal pension age.
44. Redundancy is an employment issue not linked to a member's pension. So, NHS BSA is unable to determine whether a member can take redundancy. The employer must ensure that if redundancy is offered, it is able to finance the agreement. To do so, the employer may approach NHS BSA for a redundancy estimate by submitting form AW295, which also sets out the member's pensionable pay details for this purpose.
45. This process ensures that NHS BSA can confirm the correct benefit details and retirement options. Depending on the financial commitment involved, an employer could choose not to make a member's post redundant. For that reason, a member's redundancy estimate can only ever be sent directly to their employer.
46. Considering the difference between Miss R's incorrect pensionable pay of £67,173.90 a year quoted in the June 2019 Statement and the correct figure of £21,990.35, she ought to have been aware that an error had been made in the June 2019 Statement.
47. Miss R ought to have contacted either Malling Health or NHS BSA in June 2019 and made enquiries regarding the benefits quoted at that time. But there is no record of any such enquiry.
48. NHS BSA does not have direct access to a member's payroll records. So, it is not possible for NHS BSA to verify the salary details provided by a member's employer. This is why Miss R was encouraged to check the pensionable salary figure quoted in the June 2019 Statement.
49. There were no unpaid contributions from Malling Health that delayed providing Miss R's redundancy estimate to Malling Health. NHS BSA had been referring to Miss R's

member record not having been updated by Malling Health on the occasions that she called to chase a redundancy estimate in August 2019.

50. NHS BSA's policy regarding telephone calls is to retain the recordings for six months before they are deleted. However, notes are taken during each telephone call and the details are held on a member's record to reflect a broad outline of the enquiry. There is no record of a telephone call with Miss R in November 2019.
51. A review of Miss R's pension record has established that she re-joined the Scheme with a new employer on 4 November 2019 then left on 10 January 2020. So, she accrued additional benefits that would not have been available, had she retired before this period of employment.

## **Adjudicator's Opinion**

52. Miss R'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:-
  - Malling Health prompted Miss R to obtain a redundancy estimate from NHS BSA at the time she was considering voluntary redundancy in July 2019. However, Miss R has provided no evidence that NHS BSA sent her a redundancy estimate confirming an annual pension of £3,696.86 or a lump sum of £11,090.59 in accordance with the June 2019 Statement.
  - During the telephone call to NHS BSA on 21 October 2019, Miss R said that Malling Health had not confirmed her benefit details. By the time of that call Miss R had chased NHS BSA for a redundancy estimate on several occasions, after she had already left Malling Health. So, in the Adjudicator's view Miss R had not received a redundancy estimate to confirm the value of her benefits, before taking voluntary redundancy. It was not reasonable for Miss R to have relied solely on the June 2019 Statement.
  - The June 2019 Statement included a disclaimer stating that it was an estimate, for guidance only. Miss R should have checked that the pensionable pay quoted was consistent with her actual pay, and if the figure was significantly different, she should have contacted her employer. The June 2019 Statement stated that Miss R's annual pensionable pay was £67,173.90. But at the time Miss R's full-time equivalent pensionable pay, was in fact, £21,990.35 a year. In the Adjudicator's opinion the disclaimer was clear as was the obvious error.
  - In the Adjudicator's view there was a significant difference between Miss R's quoted pensionable pay and her actual pensionable pay. So, the onus was on Miss R to contact either Malling Health or NHS BSA and make sufficient enquiries if she was inexperienced in dealing with pensions. Had she done so, it is likely that Miss R would have received clarification that the figures quoted in the June



2019 Statement were incorrect. In the Adjudicator's opinion NHS BSA cannot be held responsible for Miss R's failure to make sufficient enquiries.

- It was not possible to make any findings or reach any conclusions on the call of 23 July 2019, despite Miss R's claim that the benefits quoted in the June 2019 Statement were confirmed by NHS BSA. The call handler's summary states that Miss R "called regarding what happens to her pension if she's [sic] made redundant". In the Adjudicator's opinion Miss R was required to obtain a redundancy estimate to confirm her correct benefits entitlement, regardless of what was discussed on 23 July 2019.
- NHS BSA's normal procedure is to only send a redundancy estimate to an employer. Malling Health requested Miss R's redundancy estimate on 6 August 2019. It was sent on 1 October 2019, after Malling Health had updated Miss R's member's record on 28 August 2019, confirming the correct retirement benefits, including a pension of £1,794.64 a year and a lump sum of £5,395.92. By that time Miss R had already accepted voluntary redundancy. In the Adjudicator's opinion NHS BSA followed its normal procedures and cannot be held responsible for Miss R making her decision in July 2019, prior to receiving a redundancy estimate.
- NHS BSA has said that in calculating Miss R's redundancy estimate, it was identified that her record with Nestor for the Scheme year 2016/2017 contained errors. NHS BSA contends that it was these errors by Nestor that resulted in the June 2019 Statement containing overstated figures. NHS BSA is reliant on a member's employer submitting timely and correct information. In the Adjudicator's opinion, there was no evidence that NHS BSA held Malling Health responsible for the error in the June 2019 Statement.
- NHS BSA confirmed that there were no unpaid employer contributions from Malling Health, albeit Miss R appears to have been informed in August 2019, that "contributions" had not been updated and her employer had been contacted. Rather, Miss R's member record had not been updated with her current pay. As a result, it was not possible for NHS BSA to produce Miss R's redundancy estimate at that time or identify that Miss R's pay in the June 2019 Statement was overstated.
- In the Adjudicator's view there was no maladministration by NHS BSA in that regard; simply a misunderstanding of the term "contributions". NHS BSA cannot be held responsible for Miss R's assumption that she would receive larger benefits than those quoted in the June 2019 Statement. There is no evidence that Miss R was sent a redundancy estimate confirming this.

53. NHS BSA accepted the Adjudicator's Opinion, Miss R did not, and the complaint was passed to me to consider. Miss R provided her further comments which do not change the outcome. I have considered the additional points raised by Miss R (summarised in paragraph 54 to 58 below), but I agree with the Adjudicator's Opinion.

54. The meaning of 'Pensionable Pay', quoted in the June 2019 Statement, was unclear since she had limited knowledge of "common pensions terminology". She assumed that 'Pensionable Pay' was "an accumulation of some part of my salary accumulated over some period of time during which I paid contributions..." and not an annual figure.
55. It was reasonable to assume that the initial figures NHS BSA provided in the June 2019 would be approximately correct. At the time she would not have believed that the quoted benefits could be as inaccurate as they turned out to be. She was also not aware of any potential redundancies. So, in June 2019 those figures were less significant than in July 2019 when she took voluntary redundancy.
56. "There was no time for letters" to be sent to or received from NHS BSA when she telephoned NHS BSA on 23 July 2019. She had to decide whether to accept voluntary redundancy before the consultation meeting with Malling Health on 26 July 2019.
57. She did not decide to take voluntary redundancy before receiving the overstated benefit details. Her financial situation was such that it would have been 'impossible' to do so without the confidence that she would have sufficient income. This is why she telephoned NHS BSA and trusted it to provide correct information.
58. NHS BSA's letter of 3 November 2020, stated that the benefit details quoted in the June 2019 Statement were confirmed during the telephone call on 23 July 2019. NHS BSA also said that at the time of the call it was unaware her member record contained errors.

### **Ombudsman's decision**

59. Miss R has complained that she relied on misinformation provided by NHS BSA in making a decision to accept voluntary redundancy, causing her financial detriment.
60. Miss R asserts that she did not know the meaning of pensionable pay quoted in the June 2019 Statement, as she had limited knowledge of "common pensions terminology." Miss R says she assumed that pensionable pay' was "an accumulation of some part of my salary accumulated over some period of time during which I paid contributions..." Miss R also contends that it was reasonable to assume that the figures NHS BSA had provided in the June 2019 Statement would have been approximately correct.
61. Having reviewed the June 2019 Statement, I note that page 1 states "Pay £67,173.90" and "Updated to 31 March 2017". Page 4 of the statement then explains that 'Pay' is "The full-time equivalent pay (at last update) used to calculate your officer benefits..."
62. I find that this information was sufficiently clear to make Miss R aware of what pensionable pay was. The disclaimer in the June 2019 Statement confirmed that Miss R should check that the amount of pensionable pay quoted was consistent with her

current pay, or what would be the full-time equivalent pay if she worked part-time. It also stated that Miss R should contact her employer if the 'Pensionable Pay' figure was significantly different.

63. Despite the fact that her full-time equivalent pay was, in fact, £21,990.35 a year, Miss R has provided no evidence that she contacted her employer or NHS BSA to query the pensionable pay figure quoted on the June 2019 Statement.
64. I consider that, had Miss R contacted NHS BSA or Malling Health to query why her pensionable pay was quoted as £67,173.90, at that time, on the balance of probabilities, it would have highlighted that there had been an error in the calculation of her benefits in the June 2019 Statement.
65. I find that NHS BSA cannot be held responsible for Miss R's failure to make sufficient enquiries in order to clarify these points, or for any implications of her failure to make such enquiries.
66. Miss R says she was not aware of any potential redundancies at the time she obtained the June 2019 Statement. So, the figures on that statement were less significant in June 2019 than they were in July 2019, when she took voluntary redundancy.
67. I note that Malling Health told Miss R that she should ask NHS BSA for a redundancy estimate when she was considering voluntary redundancy in July 2019. Benefit quotations such as the June 2019 Statement are not intended to convey any automatic entitlements and they include clear warning caveats. Miss R has provided no evidence that she received definitive confirmation of the benefits she would get if she accepted voluntary redundancy from her employer. So, I find that it was not reasonable for Miss R to assume that the figures quoted in the June 2019 Statement would be approximately correct and take voluntary redundancy.
68. Miss R not being aware of any potential redundancies from Malling Health at the time of downloading the June 2019 Statement is irrelevant, as this statement was obtained prior to Miss R being offered voluntary redundancy. I find that it was a personal choice of Miss R's to claim voluntary redundancy in July 2019, without having received valid confirmation of her benefit entitlements. NHS BSA cannot be held responsible for Miss R making that decision.
69. Miss R contends that there was no time for letters to be sent to or received from NHS BSA when she telephoned NHS BSA on 23 July 2019. This is because she had to decide whether to accept voluntary redundancy before the consultation meeting on 26 July 2019. Miss R has also said, that during the telephone call with NHS BSA on 23 July 2019, NHS BSA confirmed that her retirement benefits would be in accordance with the June 2019 Statement.
70. Miss R has referred to NHS BSA's letter of 3 November 2020, in which NHS BSA stated that the figures on the June 2019 Statement were confirmed to her during the telephone call of 23 July 2019. However, the 3 November 2020 letter also stated that

CAS-53198-W8C5

NHS BSA had informed Miss R, during the telephone call of 23 July 2019, that her pension record had not been updated since March 2017. So, her redundancy benefits could change, and she should contact Malling Health directly to rectify this issue.

71. I do not consider that the conversation Miss R had with NHS BSA on 23 July 2019, confirmed that she would be entitled to the benefits set out on the June 2019 Statement, should she accept voluntary redundancy. So, it was not reasonable for her to have relied on this information to accept voluntary redundancy.

72. I do not uphold Miss R's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
16 October 2023