

## Ombudsman's Determination

Applicant	Mrs R
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	Northumbria Healthcare NHS Foundation Trust ( <b>the Employer</b> )

## Outcome

1. I do not uphold Mrs R's complaint and, no further action is required by the Employer.

## Complaint summary

2. Mrs R complained that the Employer provided her with:
  - An incorrect benefit quotation on 31 July 2019 on which she says she relied on when deciding to retire in November 2019.
  - Incorrect information during a telephone enquiry in August 2019.
3. Mrs R said that she should be compensated for the error and the distress and inconvenience she suffered as a result.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
5. Mrs R worked for the NHS and joined the Scheme on 19 September 1988.
6. From 1 April 2017 to 31 March 2019, Mrs R was employed by NHS South Tees CCG which was part of the Northumbria Healthcare NHS Foundation Trust.
7. The Scheme is administered by NHS Pensions which is part of NHS Business Services Authority.
8. On 25 August 2017, NHS Pensions issued an Annual Benefit Statement (**ABS**) to Mrs R. This showed a pension of £15,468.40 and a maximum lump sum of £103,122.70. These amounts were based on pensionable pay of £53,989.77.

9. On 24 August 2018, NHS Pensions issued an ABS to Mrs R. This showed a pension of £16,804.04 and a maximum lump sum of £112,026.96. These amounts were based on pensionable pay of £56,664.96.
10. On 6 March 2019, the Employer provided a benefit quotation to Mrs R. This showed a pension of £16,804.04 and a maximum lump sum of £112,026.96. These amounts were based on pensionable pay of £56,664.96.
11. On 31 July 2019, the Employer sent Mrs R a further benefit quotation. This showed a pension of £20,461.36 and a maximum lump sum of £136,409.08. These amounts were based on pensionable pay of £65,473.79.
12. Page 1 and Page 5 of the quotation dated 31 July 2019 stated the following: -

“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. The figures contained in it are based upon information that we hold as of the date that this quotation was issued and have been projected on the basis of your current pay and pattern of service exact figures for your pension 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.”
13. Mrs R has said that after receiving the estimate on 31 July 2019, she telephoned the Employer in August 2019. She explained that her purpose for this call was to find out what to do next, how to put her pension into payment and obtain clarification as to what time frames needed to be met. Mrs R cannot recall the exact time or date of the call, but she remembers she was told the July 2019 estimate would only be a few hundred pounds different from the pension she would receive. The Employer does not confirm or dispute this telephone enquiry. It has declined to comment as there are no telephone recordings of this conversation.
14. On 21 August 2019, the Employer submitted Mrs R’s pension application form to NHS Pensions which specified a payable date of 2 November 2019 and a final pensionable pay of £60,561.27. Since the pay figure was in line with the contributions NHS Pensions held on its record Mrs R’s application was processed and her pension was put into payment but at a lower rate than quoted on 31 July 2019.
15. On 1 November 2019, Mrs R complained to the Employer that it had sent her an incorrect benefit quotation on 31 July 2019.
16. On 12 November 2019, The Employer responded to Mrs R’s complaint. It apologised for the inconvenience she had experienced and explained that:
  - After investigating the matter, it was able to conclude that the mistake was wholly attributable to human error. One of its officers had used an incorrect pensionable pay figure when calculating the estimate provided on 31 July 2019.

- The quotation should have been quality-checked before it was sent out to her and the officer who failed to do this had been made aware of their error and the impact caused.
  - If she wished to pursue the complaint further, she could ask NHS Pensions to review the matter under the Internal Dispute Resolution Procedure (**IDRP**).
17. Mrs R subsequently raised an enquiry with NHS Pensions regarding the incorrect benefit quotation.
18. On 21 November 2019, NHS Pensions responded to Mrs R's enquiry. It stated that: -
- Whilst NHS Pensions is the administrative centre for the Scheme, it relies on the Employer to supply the pensionable pay and membership details needed to update a member's record and to calculate benefits. It does not have direct access to the Employer's payroll information.
  - The Employer may make amendments to, for example, pay, contributions, and hours or a start or end date, and NHS Pensions would only be aware when an award was processed. Whilst it tries to be as accurate as possible, estimates by their nature are shown for guidance only.
  - It is regrettable that the estimated figures provided in advance of Mrs R's retirement gave her an expectation of higher benefits.
  - After checking the best of the last three years' total pensionable pay figures provided by the Employer, it could confirm £60,561.27 was the best and there was no scope to increase or decrease this figure.
  - If Mrs R disagreed with the pay figures, she should contact the Employer.
19. In response Mrs R complained to NHS Pensions about the disparity between the benefits she was receiving, and the figures shown in estimate issued on 31 July 2019.
20. On 15 January 2020, NHS Pensions issued its Stage 1 IDRP response. It stated that:-
- Whilst it was responsible for carrying out the central administration, the Employer was tasked with the local administration of the Scheme such as providing estimated benefit quotations to current employees.
  - Mrs R's pension benefits were calculated correctly based on the information it received with her application form and therefore it could not uphold her complaint.
  - Mrs R's grievances were with the Employer, consequently It could not explain why the Employer would direct her to NHS Pensions.
21. On 21 January 2020, Mrs R wrote to the Employer complaining that:

- She made the decision to retire based on the figures presented in the erroneous benefit quotation issued on 31 July 2019.
  - Since she is entitled to a lower pension than expected, she has taken on part-time employment to cover the shortfall.
  - She was seeking compensation for the distress and Inconvenience she had suffered as a result of the error.
22. The Employer responded to this on 28 January 2020 and again insisted that Mrs R needed to pursue her complaint with NHS Pensions.
23. On 24 March 2020, Mrs R appealed the Stage 1 IDRPs response.
24. On 19 May 2020, NHS Pensions issued its Stage 2 IDRPs response. It explained that:-
- NHS Pensions compiles and maintains a membership history from all the data submitted by the Employer during the career of each member. This record of membership forms the basis of any benefit calculations it undertakes for a member. It does not however have direct access to the Employer's pensions and payroll systems and therefore is not able to validate the information provided.
  - Although the Employer had used the systems provided by NHS Pensions to give Mrs R an estimate, it was also the Employer's responsibility to ensure the information it had input was correct. If any information on her pension record appeared to be incorrect, the Employer should contact NHS Pensions.
  - For their part, the Scheme members are responsible for checking the information provided for any inaccuracies and liaising with the Employer or NHS Pensions to resolve any discrepancies.
  - Aside from the ABS' issued by NHS Pensions, Mrs R had received estimated benefit quotations from the Employer. The first was sent on 6 March 2019 and showed a pension of £16,804.04 with a maximum lump sum of £112,026.96. The estimate issued on 31 July 2019 showed a pension of £20,461.36 with a maximum lump sum of £136,409.08. In total this represented an increase of approximately 18% in four months.
  - After considering the information Mrs R had provided, it could not uphold her complaint. It acknowledged that her Employer had accepted fault for the erroneous estimate and confirmed that her pension application was processed based on the information provided by the Employer.
  - On 10 December 2021, the Employer provided its final response. It stated that it was unable to comment upon the call handler advising Mrs R that there would 'only be a few hundred pounds difference' as they have since left the organisation and there was no corresponding call note or recording.

## **Adjudicator's Opinion**

25. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Employer.
26. The Adjudicator's findings are summarised below:-
27. The Employer provided Mrs R with an incorrect estimated benefit quotation on 31 July 2019 which overstated the value of her benefits. The Employer has confirmed that this was caused by human error. In the Adjudicator's view, Mrs R should have been given the correct figures and the Employer should have robust checks in place to ensure the information provided was correct.
28. In this case, the provision of incorrect information amounts to maladministration. As maladministration has occurred, the normal course of action would be, as far as possible, to put Mrs R back into the position she would have been in had the error not occurred. This does not, however, mean that Mrs R is entitled to the higher amount in the incorrect statement.
29. To successfully claim for negligent misstatement, Mrs R needs to show that she relied to her detriment on the incorrect information and that it was reasonable for her to do so.
30. Mrs R received a single incorrect benefit quotation issued on 31 July 2019 and with reasonable diligence, she should have recognised that there was a notable difference between the pensionable pay figure used in the calculations and her actual salary.
31. Further, Mrs R did not consider the quotation issued four months before, on 6 March 2019. If she had compared the two quotations, she would have noticed that the pay figure used to work out her pension and lump sum in March 2019 was £56,664.96, and the one used in July 2019 was £65,473.79. This meant that over four months her pay had increased in excess of £8,000. In view of this, the Adjudicator was satisfied that Mrs R had previously received sufficient information to identify the error in the pensionable pay figure and to determine that the estimate received on 31 July 2019 was unreliable.
32. Mrs R ought to have queried the pay figure at the time she received the incorrect estimate. However, there is no evidence to suggest that she made such an enquiry with either the Employer or NHS Pensions.
33. After considering the available evidence, the Adjudicator concluded that it was unreasonable for Mrs R to have relied on the incorrect statement, and therefore financial loss does not need to be considered.
34. Mrs R has claimed that she was given incorrect information when she telephoned the Employer in August 2019. She says she was told the pension shown in the July 2019 estimate would only be a few hundred pounds different from the pension she would receive. The Adjudicator was unable to confirm exactly what was discussed in this call because there was no call recording for this conversation. The context Mrs R

provided in relation to the call suggested that she had telephoned the Employer seeking general information and did not specifically question the figures shown in the July 2019 estimate. Taking this into account, the Adjudicator was of the view that the call handler Mrs R spoke to did not provide her with incorrect information but gave her general advice. If the pensionable pay figure had been brought to the call handler's attention, they would have been in a better position to comment on her specific circumstances.

35. While there is no doubt that receiving the erroneous benefit quotation will have been disappointing for Mrs R, any distress and inconvenience caused will have been nominal. She ought to have reasonably been aware that an error had occurred. Further, the period of time between the date of incorrect information being provided and the error coming to light was just a matter of weeks. So, in the Adjudicator's view, an award for non-financial injustice was not warranted.
36. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
37. Mrs R provided her further comments which do not change the outcome. She said
  - She is entitled to some compensation for the stress she has experienced and the work she has had to carry out in complaining about the incorrect benefit quotation.
38. I note the additional points raised by Mrs R, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

39. Mrs R has not provided any new submissions in response to the Adjudicator's Opinion. In the absence of any alternative evidence to consider, I can see no reason to reach a different outcome from that in the Adjudicator's Opinion.
40. I have considered Mrs R's comments that she should receive compensation for the time and effort she has spent in dealing with her complaint and the distress and inconvenience she experienced due to receiving an incorrect estimate on 31 July 2019.
41. Mrs R came to realise the July 2019 estimate was incorrect after receiving payment of her pension even though she could have reasonably identified this beforehand. She formally complained to the Employer about the estimate on 1 November 2019. The Employer investigated the matter, apologised and provided an explanation shortly after on 12 November 2019. Taking all of this into account, whilst I am sympathetic to the fact that dealing with this matter would have caused Mrs R some frustration, Mrs R's complaint was resolved in 11 days so the distress and inconvenience she suffered would have been minimal. I, therefore, do not find that a payment for non-financial injustice is justified in this case.
42. I do not uphold Mrs R's complaint.

CAS-54057-R2T1

**Dominic Harris**

Pensions Ombudsman  
9 February 2023