

## Ombudsman's Determination

Applicant	Ms T
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHS Business Services Authority ( <b>NHS BSA</b> ) Stoke Gifford Medical Centre ( <b>the Practice</b> )

## Outcome

1. Ms T's complaint is partly upheld. To put matters right, the Practice shall pay Ms T £1,000 for the serious distress and inconvenience she has suffered.

## Complaint summary

2. Ms T has complained that she relied on several online retirement quotations provided by NHS BSA that were subsequently confirmed to have been overstated, causing her financial detriment.

## Background information, including submissions from the parties

3. The Scheme is governed by the NHS Pension Scheme Regulations (**the Scheme Regulations**). Regulation 2.J.14 of the 2008 Section of Scheme Regulations stipulates that:-

"[...]

(6) An employing authority must, in respect of a person, keep a record of all—

- (a) contributions paid under regulations 2.C.1, 2.C.8 or 2.C.10;
- (b) contributions due under regulations 2.C.1, 2.C.8 or 2.C.10, but unpaid;
- (c) contributions paid under regulation 2.C.5;
- (d) contributions due under regulation 2.C.5, but unpaid;
- (e) hours or sessions referred to in regulation 2.A.3;
- (f) pensionable pay or, in the case of non-GP Provider, pensionable earnings;
- (g) absences from work referred to in regulation 2.A.4;
- (h) commencement and termination of pensionable employment;
- (i) reasons for termination of pensionable employment.

[...]"

4. Regarding 'Membership Status and Breaks in Service', Chapter 3 of the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (**the 2015 Regulations**) provides that:-

**"6 Active member status preservation**

Unless otherwise provided in these Regulations, a transition member who is an active member of the new scheme is to be treated, for the purposes of the old scheme, as though they continue to be an active member of the old scheme notwithstanding the operation of section 18(1) of the 2013 Act.

[...]

**14 Determination of pensionable pay, final pensionable pay and reckonable pay**

(2) For any purpose of the old scheme including the calculation of benefits payable under that scheme to or in respect of a 2008 officer transition member or a non-pensionable 2008 Section member, the member's pensionable pay and reckonable pay are to be determined by reference to the 2008 Regulations...".

5. On 1 April 2011, Ms T joined the 2008 Section of the Scheme (**the 2008 Section**) with a Normal Retirement Age (**NRA**) of 65.
6. On 1 April 2015, Ms T transitioned into the 2015 Section of the Scheme (**the 2015 Section**).
7. Ms T's complaint relates to her retirement benefits in the 2008 Section only.
8. On 13 July 2016, Ms T downloaded an annual benefit statement (**the 2016 ABS**) via NHS BSA's online member portal (**the member portal**). Based on pensionable 'Pay' of £16,404.73 and pensionable service of two years and 268 days, it quoted a maximum Pension Commencement Lump Sum (**PCLS**) of £3,203.91 plus a residual pension of £480.59.
9. A disclaimer in the 2016 ABS stated:

"Please be aware this is an estimate and shown for guidance only. You should check the amount of [pensionable earnings] quoted is consistent with your current pay...If the figure is significantly different you should contact your employer..."

10. With regard to 'Pay' the 2016 ABS explained that this was:

"The average of the best three consecutive years full time equivalent pensionable pay (at last update) in the last ten used to calculate your officer benefits. This will be recalculated at retirement based on your final 10 years pay, and is therefore subject to change..."

11. On 2 October 2018, Ms T downloaded another benefit statement via the member portal (**the 2018 ABS**). Based on pensionable 'Pay' of £86,136.45, it quoted benefits including a maximum PCLS of £16,822.71 and a residual pension of £2,523.41 a year under the 2008 Section.
12. The disclaimer previously included in the 2016 ABS was also quoted in the 2018 ABS.
13. On 3 October 2018, Ms T telephoned NHS BSA and was provided with information regarding the possibility of early retirement.
14. On 20 June 2019, Ms T downloaded another ABS via the member portal (**the June 2019 ABS**). Based on pensionable 'Pay' of £86,136.45, it quoted a maximum PCLS of £16,822.71 and a residual pension of £2,523.41 a year under the 2008 Section.
15. The June 2019 ABS included the same explanation of pensionable 'Pay' and the disclaimer that were previously contained in the 2016 ABS.
16. On 8 August 2019, Ms T telephoned NHS BSA to discuss her benefit entitlements and was provided with details regarding the Scheme's early retirement factors, trivial commutation and how to make a retirement claim.
17. On 6 September 2019, Ms T downloaded another annual benefit statement via the member portal (**the September 2019 ABS**). It quoted pensionable 'Pay' of £88,520.44 and a maximum PCLS of £17,288.36, plus a residual pension of £2,593.25 per year.
18. The September 2019 ABS also included the same disclaimer and information on 'Pay' that had previously been included in the 2016 ABS.
19. On 29 November 2019, Ms T telephoned NHS BSA and was provided with the Practice's contact details so that she could ask for a retirement quotation.
20. On 9 December 2019, Ms T telephoned NHS BSA again to ask for a retirement quotation and Ms T has said:-
  - The call handler suggested that she could produce a quotation by entering details from the September 2019 ABS into a calculator on NHS BSA's website (**the Calculator**).
  - Based on guidance provided by the call handler during the call, she obtained benefit details via the Calculator including a maximum PCLS of £13,104 plus an annual pension of £1,967.77 (**the December 2019 Quotation**).
  - The call handler also completed some calculations and confirmed that the figures set out in the December 2019 Quotation would be her approximate benefits.
21. In December 2019, Ms T asked the Practice for a retirement quotation.

22. On 13 December 2019, the Practice telephoned NHS BSA to ask for a retirement quotation on Ms T's behalf. In response the call handler said that the Practice should call NHS BSA's Online Pensions Team (**the Online Pensions Team**) and provided its telephone number.
23. On 17 December 2019, Ms T submitted a retirement claim form to the Practice for retirement at age 55 on 23 March 2020.
24. On 18 December 2019, the Practice emailed Ms T and asked whether she would like to retire under the 2008 Section or the 2015 Section, and on the following day Ms T confirmed that she would like to retire under the 2008 Section.
25. On 20 December 2019, the Practice emailed Ms T and said that an error had been found in the retirement claim form. She had incorrectly ticked a box suggesting that she would like to retire having reached age 65.
26. On the same day Ms T replied and said that she had intended to take early retirement with an actuarial reduction before age 65. She also telephoned NHS BSA to discuss the possibility of continuing employment with the Practice after retirement under the 2008 Section.
27. On 23 December 2019, Ms T emailed her mortgage broker, Taylors Countrywide (**the mortgage broker**) asking for a mortgage agreement. Attached to the email were documents in support of her request. This included a letter from the Practice dated 19 December 2019 (**the December 2019 letter**), which quoted the same benefit entitlements as had been set out in the December 2019 Quotation.
28. On 3 January 2020, the Practice emailed Ms T to ask whether she would like to obtain financial advice.
29. On 8 January 2020, Ms T telephoned NHS BSA and discussed the timescales involved in processing a retirement claim.
30. On 17 January 2020, NHS BSA received Ms T's retirement claim form from the Practice. The Practice stated that at around this time, it also submitted confirmation of Ms T's service and salary details to NHS BSA.
31. On 28 February 2020, the mortgage broker wrote to Ms T confirming she had purchased a house.
32. On 26 March 2020, Ms T's benefits from the 2008 Section went into payment. NHS BSA sent her a statement (**the March 2020 Statement**) confirming that the benefits would be a PCLS of £2,553.90, plus a pension of £383.09 a year, based on final pensionable Pay of £20,347.80.
33. On 13 April 2020, Ms T emailed NHS BSA and complained that she had received a PCLS of only approximately £2,500 and that her pension instalments were only around £32 per month.

34. On 16 April 2020, Ms T emailed NHS BSA and complained that she had made irreversible financial commitments based on pre-retirement figures it had provided.
35. On 5 May 2020, Ms T submitted her complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:
- She had telephoned NHS BSA on several occasions over the previous 12 months to raise enquiries regarding her retirement benefit entitlements. During these telephone calls she "was always" referred to the Calculator to produce her own retirement quotation.
  - She had telephoned NHS BSA on 9 December 2019 to ask for a retirement quotation as the Calculator was "confusing". Based on the figures that the call handler then confirmed, she submitted a retirement claim form to the Practice in December 2019.
  - She subsequently proceeded to purchase a house in February 2020 and agreed to reduce her working hours from April 2020. She also borrowed £13,104 from her daughter and planned to repay that sum when the PCLS from the 2008 Section had been received.
  - It was only during the telephone call with NHS BSA on 23 March 2020 that she received confirmation that the reduced benefits set out in the March 2020 Statement would be payable. The reduced benefits have caused her financial hardship.
36. On 18 May 2020, NHS BSA wrote to Ms T in response to her complaints of 13 April 2020 and 16 April 2020. In summary NHS BSA said:
- Administration of the Scheme is a partnership between NHS BSA and a member's NHS employer. NHS BSA does not have direct access to each member's payroll records. So, it is the Practice's responsibility to provide NHS BSA with her accurate service and salary details promptly.
  - Any retirement quotations produced via the member portal are based on updates provided by an employer at the time a quotation is produced and do not automatically apply an actuarial reduction to reflect early retirement.
  - The overstated figures she had referred to were also based on final pensionable pay of £88,520.44 which was significantly higher than would be expected for the position she held and her pensionable service up to 31 March 2015. She ought to have recognised this and queried the issue.
  - Upon receipt of her retirement claim form, the Practice was asked to confirm her correct service and salary details. The Practice's subsequent response enabled the correct final pensionable pay figure of £20,347.80 to be calculated.

- She could refund any benefits already paid and cancel the retirement claim, if she would like to do so, in view of the distress and inconvenience she had suffered as a result of the reduced benefit entitlements.
37. On 29 May 2020, the Practice updated Ms T's service and salary details for the Scheme year 2015/2016 via the Scheme's online employer portal (**the employer portal**).
38. On 15 June 2020, Ms T appealed under stage 2 of the IDRPs, having assumed that NHS BSA had responded to her complaint under stage 1 of the IDRPs. In summary Ms T said:
- She had sought assistance from the Practice in entering details from her benefit statements in the Calculator. However, even the Practice found the figures and the Calculator "confusing."
  - At the time of downloading the September 2019 ABS, she was unaware that the quoted 'Pay' figure of £88,520.04 was incorrect. She had Joined the 2008 Section in 2011 and assumed that the pay figure covered four years of pensionable service between 2011 to 2015.
  - She had also claimed benefits from another occupational pension scheme, having accrued nine years of pensionable service, and the figures quoted were more than double those stated in the September 2019 ABS. So, the information provided in the September 2019 ABS seemed plausible.
  - Following its initial processing of her retirement claim, NHS BSA failed to immediately inform her of the significant error in the service and salary details provided by the Practice for the period 1 April 2015 to 31 March 2016.
  - NHS BSA ought to have been aware that she had relied on the overstated benefit details she had downloaded via the member portal to calculate her pension entitlements before submitting a retirement claim.
  - Cancelling the retirement claim would not help her since this would require repayment of the benefits already received and she was already suffering financial hardship.
39. On 15 July 2020, NHS BSA wrote to Ms T in response to her complaint under stage one of the IDRPs and reiterated the information provided in the letter of 18 May 2020. In summary NHS BSA also said:-
- The Practice had telephoned on 13 December 2019 to ask for a retirement quotation on her behalf and was referred to the Online Pensions Team. However, there was no record of the Practice doing so.
  - While processing the initial stages of her retirement claim, it was identified that her pay for the period 1 April 2015 to 31 March 2016 had been overstated by the

Practice. This was why her benefits in payment were lower than the pre-retirement quoted annual benefit statements she downloaded from 2018 onwards.

- A disclaimer in each annual benefit statement downloaded via the member portal warns members to check their pensionable pay used in calculation of the quoted benefits is consistent with their current 'Pay'. Members are then asked to contact their employer if the figure is significantly different.
- The Practice had sent incorrect service and salary details that were used in calculating the overstated benefit statements she downloaded via the member portal. It had been her responsibility to check the 'Pay' figure quoted and contact the Practice or NHS BSA if it was incorrect in any of the statements. So, her complaint was not upheld.

40. On 18 August 2020, NHS BSA wrote to Ms T in response to her appeal under stage two of the IDRP and reiterated the information provided in the letter of 15 July 2020. In summary NHS BSA also said:-

- There was no difference between the benefits quoted in the 2018 ABS and the June 2019 ABS. So, it would not have been reasonable to accept the significant increase in benefits from the figures quoted in the 2016 ABS, without querying it. However, there was no record of her making any such enquiry.
- The benefits accrued under another occupational pension scheme that she referred to covered 9 years of service. Her membership of the 2008 Section was for a period of 2 years and 268 days. So, it was not reasonable for her to assume that the benefits from the two schemes could be comparable in the way that she suggested. The differences should have prompted her to contact the Practice or NHS BSA.
- Employers linked to the Scheme, including the Practice, are provided with guidance by NHS BSA's Stakeholder Engagement Team (**the Stakeholder Engagement Team**), regarding any issues around benefit entitlements.
- Due to this support, scheme employers are expected to act as a first point of contact for members who would like to make an enquiry. So, the Practice ought to have investigated the inflated 'Pay' figures quoted in her pre-retirement annual benefit statements.
- Members are asked to submit retirement claims three months before their intended retirement date. Her retirement claim form was received from the Practice on 17 January 2020 with a retirement date of 23 March 2020, allowing less than the normal three-month processing period.
- Consequently, there was insufficient time to establish that the figures quoted in a recent retirement quotation she had downloaded were significantly lower than those actually payable and advise of this before her retirement date in accordance with NHS BSA's normal procedures.

- During initial processing of the retirement claim an error was identified in her service and salary details provided by the Practice. Before this could be queried, the Practice updated the employer portal to reflect appropriate details. This meant that when the retirement claim was reviewed, it was possible to pay the benefits based on the corrected information.
- A member's benefits can only be paid in accordance with the Scheme Regulations. So, it is not possible to pay the overstated figures quoted via the member portal.

### **Ms T's position**

41. She only downloaded the 2016 ABS to check that her log in details were correct. So, the figures quoted at the time were insignificant, especially since she did not intend to retire until 2027, by which time the benefits payable would have changed.
42. She downloaded the 2018 ABS, after subsequently deciding to consider early retirement, and claim benefits from some other pension arrangements. At the same time, she was exploring the feasibility of purchasing a house. So, the retirement figures obtained via the member portal became "crucial".
43. After downloading the June 2019 ABS and the September 2019 ABS, she telephoned NHS BSA on several occasions while attempting to establish her correct benefit entitlements. During the course of her enquiries with NHS BSA, she was not made aware of errors in any annual benefit statement she had received.
44. It is unclear why the Practice did not telephone the Online Pensions Team in accordance with the guidance NHS BSA provided during the telephone call on 13 December 2019.
45. By around that time, she urgently needed evidence of the benefits from the 2008 Section in support of a mortgage application and sought assistance from the Practice. During a meeting on 19 December 2019, the Practice said that it could not produce a retirement quotation for her via the employer portal.
46. Instead, the Practice input her details from the September 2019 ABS into the Calculator and obtained the same figures as had been set out in the December 2019 Quotation. On that basis the Practice wrote the December 2019 Letter in support of her mortgage application.
47. Having received the Practice's email of 3 January 2020, she replied on the same day and said that she did not intend to seek financial advice.
48. Even though, the benefits from the 2008 Section were lower than expected, she needed to repay the sum of £13,104 she had borrowed. So, in 2020 she reluctantly claimed her benefits from the 2015 Section to do so in part.
49. In January 2021, she received an inheritance payment and was able to fully repay the sum she had borrowed and a credit card debt that had resulted from the reduced



benefits from the 2008 Section. Her mortgage was due for repayment up to age 75 and she had intended to use the inheritance, to repay a lump sum and shorten the term.

50. She did eventually repay a smaller than intended lump sum, which could have caused additional interest having to be paid over the term of the mortgage. However, she obtained additional funds through an “equity release” agreement on her house to offset this issue.
51. She did not consider it necessary to seek financial advice regarding her options at around the time of submitting a retirement claim under the 2008 Section. She had previously contacted NHS BSA on several occasions to check her benefit details.

### **NHS BSA’s position**

52. When an employer provides new service and salary details via the employer portal, this does not result in a “real time” update in a member’s annual benefit statement in the member portal. The updates in the annual benefit statements are not entered manually by NHS BSA. The details are captured automatically each year via a ‘data cut’ to process the latest details provided by each employer.
53. The Practice updated Ms T’s service and salary details for the 2015/2016 Scheme year via the employer portal on 29 May 2020. Such updates overwrite any previous records. So, it is not possible to check the employer portal for any historic service and salary details provided by the Practice for Ms T. When such updates are received, an assessment is normally undertaken to establish whether this would affect a pension due for payment.
54. Due to the COVID19 pandemic in May 2020, NHS BSA staff had limited access to online systems. So, priority was given, at that time, to the calculation and payment of members’ initial benefits. Consequently, there was a delay, which meant there was insufficient time to review Ms T’s record in the normal way.
55. The retirement notice sent to Ms T, on 26 March 2020, was a system generated letter. NHS BSA’s system automatically completes the included information from a member’s online record based on information provided by their employer.
56. Calls are recorded and held for six months so it is not now possible to listen to those held with Ms T in 2018 and 2019. However, the call handlers update a member’s record with a basic overview of each telephone conversation.
57. During the telephone call on 9 December 2019, the call handler said that Ms T could produce her own retirement quotation via the Calculator or contact the Practice to ask for one. Ms T was also informed that a charge would be applicable if NHS BSA provided a retirement quotation.
58. There is no record of the Practice telephoning the Online Pensions Team following the enquiry of 13 December 2019.

If the Practice had asked for a retirement quotation on Ms T's behalf in December 2019, and simultaneously provided updated service and salary details, NHS BSA would have provided it for free. The Practice could also have calculated a free retirement quotation for Ms T via the employer portal.

### **The Practice's position**

59. The reasons for the significant discrepancy between the figures quoted in the 2016 ABS and the 2018 ABS are unclear. The Practice's payroll was outsourced to a third party administrator in 2015. It recorded annual 'Pay' of £13,384.04 for Ms T in the 2015/2016 scheme year.
60. Ms T's annual 'Pay' in the 2014/2015 scheme year was £12,888.22. Her hours have varied over time due to changing circumstances and she also changed role from being a receptionist to a secretary, which resulted in a pay increase. However, the resulting additional entitlements were minimal when compared to the incorrect service and salary details recorded by NHS BSA.
61. At the time Ms T was considering leaving the Scheme to claim benefits from the 2008 Section, there was confusion regarding the way in which she needed to opt out of the Scheme. The Practice was unable to provide guidance on this so Ms T was told that she should seek independent financial advice.
62. Ms T spoke to NHS BSA on several occasions in the year leading up to her retirement in March 2020. During these enquiries she sought advice from NHS BSA on how to use the Calculator and discussed the figures provided. So, Ms T was confident that those figures were correct.
63. NHS BSA ought to have promptly identified an incorrect increase of around 425% in Ms T's final pensionable 'Pay' figure during their telephone conversations and provided her with a free retirement quotation.
64. The Practice finds it difficult to calculate free retirement quotations via the employer portal, as the system does not always accept a member's National Insurance Number. In Ms T's case it had not been possible to access her record due to it having been corrupted at NHS BSA.
65. Ms T required a retirement quotation urgently in December 2019. So, she expressed a preference to rely on benefit details she had obtained following telephone conversations with NHS BSA, rather than wait for the Practice to produce a new retirement quotation.
66. Had there been no time constraints in December 2019, the Practice would have contacted the Stakeholder Engagement Team to establish Ms T's accurate final pensionable 'Pay' figure and produced an accurate retirement quotation for her.
67. It was a busy holiday period when Ms T's retirement claim form was received on 17 December 2019. On the same day, Healthpay, the Practice's payroll administrator at

the time confirmed that Ms T would need to leave her employment for at least a day, if she intended to re-join the Scheme after her retirement.

68. On 18 December 2019, the Practice informed Healthpay that Ms T would leave her employment with the Practice on 23 March 2020 and return on 25 March 2020. Following the holiday period there was a delay in forwarding Ms T's retirement claim form to NHS BSA between 3 January 2020 and 17 January 2020 while awaiting her decision regarding whether she would be seeking financial advice.

## **Adjudicator's Opinion**

69. Ms T's complaint was considered by one of our Adjudicators who concluded that the Practice should award Ms T £1,000 in recognition of the distress and inconvenience she had suffered. The Adjudicator's findings are summarised below:-
- The figures set out in the 2018 ABS, the June 2019 ABS, and the September 2019 ABS were overstated. Under the Scheme Regulations, the Practice was required to provide NHS BSA with accurate service and salary details to calculate those statements.
  - Following Ms T's retirement claim in January 2020, NHS BSA identified an error in her service and salary details that the Practice had previously uploaded to the employer portal. The Practice then updated Ms T's service and salary details for the 2015/2016 Scheme year, before NHS BSA could make further enquiries about the error. It was this update that enabled NHS BSA to process Ms T's retirement claim.
  - In the Adjudicator's view, on the balance of probabilities, there would have been no requirement for the Practice to retrospectively update Ms T's service and salary details for the 2015/2016 Scheme year in 2020, had the original data provided been correct.
  - The error in the original details amounts to maladministration by the Practice, that resulted in the incorrect annual benefit statements that Ms T downloaded between 2018 and 2019. However, it was not reasonable for Ms T to rely on the incorrect annual benefit statements and purchase a house, reduce her working hours and borrow over £13,000. Each of those statements included a clear disclaimer, which confirmed that Ms T should check the amount of pensionable earnings quoted was consistent with her current 'Pay'.
  - The disclaimers warned Ms T that, if the 'Pay' figure was significantly different, she should contact her employer. In the Adjudicator's view, the disclaimer and explanation of 'Pay' in each of Ms T's annual benefit statements ought to have been sufficiently clear to make her aware that an error had been made from the point she received the 2018 ABS.

- Ms T should have contacted the Practice or NHS BSA promptly. Had she done so and highlighted the issue with her Pay, it is unlikely that she would have downloaded any further incorrect annual benefit statements, including the September 2019 ABS, as the error would very likely have been corrected.
- In the Adjudicator's opinion, it was not reasonable for Ms T to compare the benefits she had accrued under the 2008 Section with those from her other pension arrangement in presuming that the September 2019 ABS was correct. The other pension arrangement had its own rules regarding benefit entitlements and how they were calculated. So, there is no evidence that Ms T suffered financial detriment that directly resulted from the misinformation. Ms T was also never, in fact, entitled to the overstated benefits. Consequently, there is no requirement for NHS BSA or the Practice to retrospectively honour the December 2019 Quotation.
- NHS BSA only holds recordings of telephone calls for six months. So, it is not now possible to listen to a recording of Ms T's telephone call to NHS BSA on 9 December 2019 and identify exactly what was discussed. However, the September 2019 ABS included the explanation that her 'Pay' figure would be recalculated at retirement and was subject to change. Ms T had not retired on 9 December 2019. So, in the Adjudicator's view it would not have been possible for the call handler to confirm Ms T's approximate benefit entitlements during the call nor could the call handler have been aware that her Pay details were incorrect.
- Ms T subsequently asked the Practice for a retirement quotation. NHS BSA has confirmed that Scheme employers, including the Practice, can contact the Stakeholder Engagement Team regarding any issues or benefit details that may be unclear. Scheme employers are then expected to act as a first point of contact for members who have an enquiry. So, in the first instance it was the Practice's responsibility to check and clarify Ms T's service and salary details to ensure that she was provided with correct benefit details.
- The Practice has referred to a fault it was experiencing in the employer portal. However, the Practice has provided no evidence that it contacted the Stakeholder Engagement Team to address that fault. In the Adjudicator's opinion, the Practice ought to have taken such action, and it could then have provided Ms T with an accurate retirement quotation. Alternatively, the Practice could have contacted the Online Pensions Team and provided updated service and salary details for Ms T. NHS BSA would then have provided Ms T with a retirement quotation.
- These points are especially pertinent since Ms T had made it clear to the Practice that she required a retirement quotation in support of her mortgage application. Instead, the Practice provided Ms T with the December 2019 Letter based on figures taken from the September 2019 ABS. In the Adjudicator's view, the poor service and misinformation provided by the Practice, in these instances, would have caused Ms T a loss of expectation when her correct benefit entitlements were eventually confirmed in the March 2020 Statement. The Practice ought to

have acted in accordance with its responsibilities even when Ms T required a retirement quotation urgently.

- Ms T had submitted her retirement claim form to the Practice on 17 December 2019. NHS BSA received it from the Practice on 17 January 2020. After allowing for the holiday period in December 2019, the Practice has said that between 3 January 2020 and 17 January 2020, it was awaiting clarification from Ms T as to whether she would be seeking financial advice. Ms T has said that she informed the Practice that she would not be seeking financial advice on 3 January 2020. In the Adjudicator's view there was no requirement for the Practice to await Ms T's response on whether she would be seeking financial advice unless she requested this. The Practice has provided no evidence that Ms T made any such request on 3 January 2020, or at any time before the retirement claim form was eventually submitted to NHS BSA.
- Due to the delay between 3 January 2020 and 17 January 2020, NHS BSA's normal three-month timeframe for processing a retirement claim was not available. In the Adjudicator's opinion the Practice was at fault for this delay, and it contributed to NHS BSA not sending the March 2020 Statement to Ms T confirming her reduced benefits earlier. These instances of poor service amount to maladministration by the Practice, which would have caused Ms T serious distress and inconvenience. An award of £1,000 was in keeping with the Ombudsman's guidance for non-financial injustice of this type.

70. Ms T and NHS BSA accepted the Adjudicator's Opinion, but the Practice did not, so the complaint was passed to me to consider. The Practice and NHS BSA provided their further comments, which do not change the outcome. I have considered the additional points raised by the Practice and also NHS BSA, but I agree with the Adjudicator's Opinion.

### **The Practice's additional comments**

71. The incorrect annual benefit statements that Ms T downloaded in 2018 and 2019 did not result from incorrect service and salary details submitted to NHS BSA by the Practice for the 2015/2016 Scheme year in April 2016. An update quoting Ms T's pensionable salary as £13,384 a year was appropriately provided at that time. So, this data was not amended in May 2020.
72. Lentell's, the Practice's new payroll administrator, emailed NHS BSA on 28 May 2020 and sought assistance in updating Ms T's service and salary details for the period 25 March 2020 to 31 March 2020 only, as the employer portal was "corrupted".
73. That update was successfully uploaded via the Employer portal on 29 May 2020. Healthpay has also confirmed that no updates of Ms T's service and salary details were submitted in December 2019, March 2020, or April 2020. However, it later confirmed that confirmation of Ms T's service and salary details was submitted around the time it sent her retirement claim in January 2020, but it did not have a copy of this submission.

74. NHS BSA had provided Ms T with the March 2020 Statement quoting correct benefit details. So, it is also unclear how the service and salary details provided in May 2020 could have been used by NHS BSA to generate the figures quoted in that statement. NHS BSA ought to hold a history of all the amendments that have been made to Ms T's service and salary details and when.
75. NHS BSA missed several opportunities to identify the errors in Ms T's annual benefit statements before the misinformation was provided in the December 2019 Letter. Ms T has confirmed that the retirement figures provided prior to December 2019 were "crucial" as she was considering buying a house. So, she contacted NHS BSA on numerous occasions seeking clarification of her benefit entitlement and was not made aware of any errors.
76. During Ms T's telephone call to NHS BSA on 9 December 2019, the call handler should have identified Ms T's significantly inflated service and salary details. The distress and inconvenience Ms T suffered was partly caused by her numerous telephone calls to NHS BSA to check the incorrect annual benefits statements she had downloaded in 2018 and 2019. She was then provided with inadequate responses.
77. Ms T's retirement claim form was received on 17 December 2019, requesting a retirement date of 23 March 2020. This left four working days to process the form to meet the three-month deadline for completing a retirement claim. So, the Practice had little time to do so, especially due to the approaching Christmas holiday.
78. Lentells was also busy in December 2019 and the Practice had staff on annual leave, added to the fact that it was starting to risk assess a potential COVID-19 pandemic. However, Ms T needed confirmation of her benefit details quickly to secure a mortgage for her house purchase.
79. Ms T had 'already decided to purchase a house' at the time the December 2019 Letter was provided. However, Ms T also failed to clarify that she had previously downloaded the 2016 ABS quoting significantly lower figures than those quoted in the September 2019 ABS.

#### **NHS BSA's additional comments**

80. The amended service and salary details that the Practice provided via the employer portal in May 2020 covered the period between 25 March 2020 to 1 April 2020. The updated details also covered several Scheme years including 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020.
81. Mrs T was an active member of the 2008 Section when she transitioned into the 2015 Section. So, under the 2015 Regulations, Ms T's membership is treated as continuous, even though it was not possible for her to accrue further pensionable service in that part of the Scheme after 31 March 2015.

82. Due to Ms T's continuous service, there remains a pay link between the 2008 Section and the 2015 Section when calculating her benefits. Consequently, the amended service and salary details provided by the Practice in May 2020 also relates to Ms T's retirement benefit calculations under the 2008 Section.

### **Ombudsman's decision**

83. The Practice contended that Ms T's correct service and salary details had already been sent to NHS BSA in April 2016. On that basis, the Practice has said it was not at fault for the overstated annual benefit statements that Ms T downloaded in 2018 and 2019.

84. NHS BSA has confirmed that the Practice updated Ms T's service and salary details on 29 May 2020. Such updates overwrite the previous data. So, it is not possible for NHS BSA to check any historic service and salary details provided by the Practice for Ms T. There is no requirement for NHS BSA to retain that data and this does not constitute maladministration.

85. However, I note that NHS BSA identified the error at the initial stages of processing Ms T's retirement claim under the 2008 Section. The Practice then provided revised service and salary details covering the 2015/2016 Scheme year before the matter could be queried, and it was this amendment that allowed the correct benefits to be established.

86. Consequently, the update that allowed the correct payment of Ms T's retirement benefits would likely have been applied at some point on, or shortly after 17 January 2020, at approximately the same time Healthpay stated it submitted confirmation of Ms T's service and salary details. In addition, NHS BSA has provided evidence that the Practice submitted revised service and salary details regarding the 2015/2016 Scheme year in May 2020. That update also covered several other Scheme years plus the period between 25 March 2020 and 1 April 2020.

87. I find, on the balance of probabilities, that the Practice was negligent in updating Ms T's service and salary details. Had the original details been correct, the Practice would not have needed to submit the numerous amendments that it did. In particular, taking into account that Healthpay submitted service and salary details in January 2020, which coincided with NHS BSA receiving updated details that allowed it to process Ms T's retirement claim based on correct figures.

88. Under the 2015 Regulations, there is a pay link between Ms T's benefits in the 2008 Section and the 2015 Section. So, the revised service and salary details provided in May 2020, also had an impact on Ms T's benefit calculations under the 2008 Section. Consequently, I find that the overstated annual benefit statements that Ms T downloaded in 2018 and 2019 were based on misinformation held by NHS BSA that had been provided by the Practice. This amounts to maladministration by the Practice.

89. While I note incorrect information was held by NHS BSA, Ms T had not complied with her responsibility to check whether the pensionable earnings quoted in the 2018 ABS was consistent with her actual pay at the time she downloaded it. The disclaimer and explanation of 'Pay' in that statement, and each of those that Ms T subsequently downloaded, was sufficiently clear on this point. So, I find that Ms T is only entitled to benefits that are correctly calculated in accordance with the Scheme Regulations, as she ought reasonably to have been aware that an error had occurred and that the figures provided could not be guaranteed.
90. Ms T could have confirmed that there was a significant discrepancy between the quoted pensionable earnings and her actual pay during any of her enquiries to NHS BSA and the Practice in 2019. This includes the telephone call on 9 December 2019 when Ms T asked NHS BSA for a retirement quotation. Since Ms T did not disclose details of the discrepancy at the time, the telephone call handler would not have been aware of the error or any potential issue.
91. NHS BSA's notes of the telephone call show that its representative told Ms T there would be a charge if NHS BSA provided her with a retirement quotation. There is no evidence that Ms T made any related payment. Instead, the representative suggested that Ms T could contact the Practice and ask for a free retirement quotation.
92. Having received such a request from Ms T, the Practice telephoned NHS BSA on 13 December 2019, requesting a retirement quotation, and was told to contact the Online Pensions Team. Instead, the Practice provided Ms T with the December 2019 Letter based on a copy of the September 2019 ABS she had provided. By giving a copy of the September 2019 ABS to the Practice, which clearly included an inflated pensionable earnings figure, Ms T had effectively reported the error to the Practice.
93. However, the Practice failed to identify the error, resulting in the overstated figures being quoted in the December 2019 Letter. I find that this poor service and misinformation amounts to maladministration by the Practice. It had been the Practice's responsibility to: be aware of Ms T's correct service and salary details; identify the error; and then provide an accurate retirement quotation. Especially as Ms T had requested a retirement quotation in support of her mortgage application.
94. I also note that having received Ms T's retirement claim form on 17 December 2019, the Practice made enquiries regarding some details she had included in the form. These enquiries ended on 20 December 2019, and the Practice has provided no evidence that it was necessary to delay forwarding the form to NHS BSA until 17 January 2020. Consequently, there was an unnecessary delay in NHS BSA processing Ms T's retirement claim and confirming her correct benefit entitlements.
95. The Practice has referred to pressures it was experiencing in December 2019, caused by being busy due to staff shortages, the Christmas break, issues around COVID-19, and the fact that Ms T required her benefit details urgently in support of her mortgage application.



96. I find that the Practice was required to comply with its responsibility to provide an accurate retirement quotation to Ms T, even under these circumstances. It ought to have identified the error in the September 2019 ABS and provided updated service and salary details for Ms T to the Online Pensions Team. NHS BSA would then have provided Ms T with an accurate retirement quotation.
97. Alternatively, the Practice could have contacted the Stakeholder Engagement Team to resolve any issues in the employer portal or for support regarding the figures quoted in Ms T's annual benefit statements if they were found to be "confusing". Had the Practice done so and appropriately identified the error in the September 2019 ABS, it could have then produced a retirement quotation based on Ms T's correct service and salary details.
98. I acknowledge that Ms T was in receipt of incorrect information, which she has argued she relied on to her detriment. However, for the reasons given in paragraph 90 above, I do not find the Practice responsible for any financial loss Ms T may have incurred in relying on the Practice's misinformation. Moreover, Ms T has mitigated her circumstances, as outlined in paragraphs 48, 49 and 50 above.
99. I find that the Practice's maladministration in addition to the poor service it provided to Ms T, would have caused her serious distress and inconvenience. There is no evidence of maladministration by NHS BSA that contributed to the distress and inconvenience Ms T suffered.
100. I partly uphold Ms T's complaint.

## **Directions**

101. Within 28 days of the date of this Determination, the Practice shall pay Ms T £1,000 in recognition of the serious distress and inconvenience she has suffered.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
16 May 2024