

## Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHS Business Services Authority ( <b>NHS BSA</b> ) Stockport NHS Foundation Trust ( <b>Stockport NHS</b> )

## Outcome

1. Mrs S' complaint against NHS BSA and Stockport NHS is partially upheld. To put matters right for the part that is upheld, NHS BSA shall pay Mrs S £1,000 for the serious distress and inconvenience she has experienced.
2. My reasons for reaching this decision are explained in more detail in paragraphs 48 to 54 below.

## Complaint summary

3. Mrs S complained that she had been provided with incorrect information via several inaccurate benefit statements. She has said that she relied on the information when deciding to retire.
4. Mrs S requested that the incorrect estimates were honoured and asked to receive redress for the additional distress and upset this complaint had caused her.

## Background information, including submissions from the parties

5. On 1 October 1996, Mr S joined the 1995 Section of the Scheme.
6. On 16 June 2002, Mrs S entered into a contract with NHS BSA to purchase additional years to increase her membership in the 1995 Section of the Scheme (the **added years contract**). The agreed terms were:-
  - Start date was 16 June 2002
  - End date was 15 June 2023
  - Percentage of pay contributed was 9%

- Added years purchased was 8 years 269 days.
7. On 18 February 2011, Mrs S asked to terminate her added years contract.
  8. On the same day, NHS BSA wrote to Mrs S and Stockport NHS to confirm the final number of added years purchased in the 1995 Section of the Scheme. It said:-
    - Start date was 16 June 2002
    - End date was 31 January 2011
    - Final added years purchased was 3 years 216 days.
  9. On 28 July 2015, Mrs S was issued with an estimate of her benefits for the 1995 Section of the Scheme as at 31 March 2015. The estimate showed that, if she became a deferred member of the Scheme until she commenced payment at age 60, her pension would be £16,769.35 and the available lump sum £50,308.06.
  10. On 29 March 2016, Mrs S was issued with a membership statement (**the 2016 membership statement**) for the 1995 Section of the Scheme. The information showed:-
    - Calendar length membership was 18 years 182 days.
    - Added years membership was 5 years 118 days.
    - Total membership was 23 years 300 days.
  11. Between 19 March 2018 and 25 October 2019, Mrs S was issued with several benefit estimates. The ranges of the information showed were:-
    - Membership was quoted as being between 28 years 26 days and 29 years 308 days
    - Added years purchased was between 6 years 209 days and 7 years 308 days.
    - Annual pension was between £17,427.52 and £20,876.38.
    - Lump sum was between £55,989.65 and £63,449.85.
  12. On 21 February 2020, Mrs S was issued with a further benefit statement by NHS BSA estimating her benefits for the 1995 Section of the Scheme on 31 March 2019. The information showed:-
    - Calendar length membership was 22 years 338 days.
    - Added years membership was 6 years 338 days.
    - Annual pension was 21,962.83.
    - Lump sum was £65,888.50

13. On the same day, Mrs S received an email from Stockport NHS which estimated her benefits on 31 March 2020 (**the 2020 estimate**). The information showed:-
  - Annual pension was £19,061.14.
  - Lump sum was £60,319.49.
14. On 31 March 2020, Mrs S left pensionable employment and became a deferred member of the Scheme.
15. On 17 April 2020, Mrs S was issued with a benefits quotation for the 1995 Section of the Scheme. The information showed:-
  - Annual pension was £17,513.42.
  - Lump sum was £56,095.15.
16. On 17 May 2020, Mrs S began receiving her benefits from the 1995 Section of the Scheme.
17. On 2 June 2020, Stockport NHS emailed NHS BSA regarding the discrepancy between the 2020 estimate and the 17 April 2020 benefits quotation. It said:-
  - It had manually calculated Mrs S' membership and agreed that 26 years 125 days was the accurate pensionable service figure for the 1995 Section of the Scheme.
  - However, the estimates Mrs S had received showed in excess of 29 years of membership up to 30 September 2019.
  - It requested an explanation for the inaccuracy of the length of Mrs S' membership.
18. On 3 June 2020, NHS BSA responded to Stockport NHS. It said:-
  - The total membership figure was incorrect due to the added years contract.
  - Mrs S had decided to terminate the contract early, but the administrator had selected the wrong contract "end reason."
  - So, the system had overlooked the contract "end reason" and calculated the credit for the added years contract as if she had still been paying into it.
19. On 9 June 2020, Mrs S complained to NHS BSA. She said:-
  - The final estimate given to her for the 1995 Section of the Scheme was an annual pension of £19,061.14 and a lump sum of £60,319.49.
  - The estimate also reflected the figures she had received in November 2018 and on 25 October 2019.
  - She had made her decision to retire based on information which she had deemed dependable and correct.

- She was shocked to receive notification that her annual pension would be £17,513.42 and her lump sum £56,095.15.
  - The difference between the figures was significant and amounted to £46,431.50 over 30 years.
  - She had already resigned, retired, and left her post with Stockport NHS before she received news of her lower pension figures, so she could not reverse the decision.
  - She requested that she be paid the pension and lump sum estimated on 21 February 2020 by Stockport NHS, with back payments.
20. On 22 June 2020, Mrs S contacted Stockport NHS as she had not received her June 2020 monthly pension payment. She said:-
- She had not received her monthly pension payment, as expected on 17 June 2020.
  - She had spoken with NHS BSA, but it was unsure why her monthly pension payments had stopped.
  - It had been a week since the due date for her payment and she had been told to expect to wait a further 10 days before receiving a response. This would have meant payment was three weeks overdue.
  - She did not feel the timeframe to resolve this matter was reasonable since she was reliant upon the payments.
21. On 26 June 2020, NHS BSA responded to Mrs S regarding her email of 22 June 2020. It said:-
- It had checked her pension record and confirmed she would receive her June 2020 monthly pension payment on 29 June 2020.
  - It asked her to complete a survey regarding her experience with its service.
22. On the same day, Mrs S responded to NHS BSA. She said:-
- She did not understand why she had not been provided with an explanation for the delay in her payments or why payment had not been made immediately after the issue was identified.
  - The monthly pension was her only source of income so the expectation for her to live without it for two weeks was unacceptable.
  - She requested a definitive explanation as to why she had not received her June 2020 payment as well as confirmation whether the payment date would be the 17<sup>th</sup> or 29<sup>th</sup> day of each month.

23. On 30 June 2020, Mrs S contacted NHS BSA to confirm that she had received her June 2020 payment but still wanted a response to her previous email.
24. On the same day, NHS BSA responded to Mrs S. It confirmed that she would receive an annual pension of £17,513.42 paid in monthly instalments on the 17<sup>th</sup> day of each month.
25. On 1 July 2020, NHS BSA sent a further email to explain the late payment of Mrs S' June 2020 pension payment. It also offered an explanation as to why the membership totals on her final benefit quote differed to those in previous estimates. It said:-
  - In previous estimates, the added years credit had been projected to her normal retirement age (**NRA**) of 60. Since she terminated the added years contract, the credit should have been reduced.
  - Since the added years record was not updated correctly, the system automatically calculated her added years credit as if the contract had been completed.
  - Mrs S' membership in the 1995 Section of the Scheme up to 30 September 2019 was 22 years 274 days of reckonable service. She had also purchased 3 years 216 days of added years benefits from the added years contract between 16 June 2002 and 31 January 2011.
  - The June 2020 pension payment was not correctly released because of a system error which it apologised for.
26. On 11 July 2020, Mrs S submitted her complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She said:-
  - She understood that the issue regarding her expected pension was due to an error made on her pension account by NHS BSA. She also understood that the non-payment of her June 2020 pension payment was due to a system error.
  - She wanted to complain that the pension she received, compared to the pension she expected to receive, was considerably lower than estimated. She did not feel that this issue had been answered or addressed satisfactorily.
  - She wanted to understand whether the non-payment of her June 2020 pension payment affected her pension solely or other pension payments too. In addition, she wanted to know if the systems error was due to a computer process or human input error.
27. On 15 July 2020, NHS BSA acknowledged Mrs S' complaint under stage one of the Scheme's IDRP.
28. On 9 September 2020, Mrs S emailed NHS BSA because it had exceeded the 40 working day response time that it had given her. She requested an update on her complaint.

29. On 10 September 2020, NHS BSA informed Mrs S that her complaint was in the process of being investigated and that she would receive a response within a few days.
30. On the same day Mrs S responded to NHS BSA. She said:-
- She was disappointed that she was not provided with reasoning for the delay in receiving a response.
  - She should have been updated regarding the progress of her complaint instead of having to approach NHS BSA for an update herself.
31. On 11 September 2020, Mrs S received NHS BSA's response to her complaint under stage one of the Scheme's IDR. It said:-
- Mrs S had been written to on 18 February 2011, following closure of her added years contract, to confirm that the final added years purchased was 3 years 216 days.
  - This information, along with the termination of the monthly 9% deductions from her pay, was sent to Stockport NHS.
  - Stockport NHS produced an estimate of her pension benefits on 10 October 2011 which showed her added years amount to be 3 years 241 days. Neither Mrs S, nor Stockport NHS questioned this information despite having previously been informed of the final added years figure.
  - It was a member's responsibility to check estimates provided by Stockport NHS.
  - Estimates provided via its Total Rewards Statement (**TRS**) portal also contained a disclaimer which advised member's that the figures provided were an estimate and for guidance only.
  - It was unable to pay her benefits in excess of those that she had actually accrued within the Scheme and all benefits had to be paid in line with the relevant Scheme Regulations.
  - It did not uphold this element of her complaint.
  - It accepted that a system error caused payment of her June 2020 pension to be delayed after the due date. It upheld this element of her complaint.
  - Since the delay had not been more than 30 days after the due date. It was unable to offer interest for the late payment.
32. On 9 October 2020, Mrs S applied for her complaint to be reconsidered under stage two of the Scheme's IDR. She said:-
- She did not dispute that she terminated her added years contract on 18 February 2011.

- Since she had expected the termination of her added years contract to be correctly recorded on the system, she had not focused on the added years in subsequent estimates. Instead, she solely focused on the pension values.
- She felt that the responsibility was with NHS BSA to ensure the information provided was correct.
- There should have been a reconciliation and systems checks in place to ensure that errors were identified.
- She questioned why the system did not highlight the issue if her added years were increasing, yet no contributions were being made towards it.
- She also questioned how she was expected to know that the information on the system, which is used for estimates generated by the TRS was incorrect.
- She was “distressed and distraught” at the pension she received being so much lower than expected.
- The fact that the incorrect information was on the system for so long should be considered in her case.

33. On 14 October 2020, NHS BSA acknowledged Mrs S’ complaint under stage two of the Scheme’s IDRPs and on 1 December 2020 it gave its response. It said:-

- On 16 June 2002, Mrs S had elected to purchase 8 years and 269 days of additional years of membership at a cost of 9% of her monthly salary in additional contributions.
- On 18 February 2011, Mrs S contacted Stockport NHS to terminate the added years contract.
- A notice of termination was sent to Mrs S, confirming that she had been credited 3 years 216 days additional membership.
- Immediately after the added years contract was terminated, Mrs S was sent a benefit statement for the 1995 Section of the Scheme which showed that by age 60, she would have purchased 8 years 269 days added years. It was not unreasonable to have expected Mrs S to have queried this information.
- Mrs S had received several estimates from Stockport NHS as well as those accessed through her TRS. The estimates were not routinely reviewed by NHS BSA due to the number produced for all Scheme members.
- Each estimate contained disclaimers setting out that members should contact Stockport NHS regarding any inaccuracies in membership or pensionable pay figures.
- It had expected Mrs S to realise that since she had made no further added years contributions, hence the consistently increasing added years figure was incorrect.

- It upheld her complaint in part as there was a delay in paying her benefits in June 2020 and apologised for the system error.

34. Mrs S' position:-

- She had requested estimates for a variety of scenarios to ascertain the affordability and viability of her retirement because she had been placed on protected pay and had reduced her working hours.
- Her focus when deciding to retire had been the pension and lump sum figures. She had not checked the membership figures as she had expected these to be correct.
- NHS BSA had received confirmation that her pay had been amended correctly, following the termination of the added years contract, so why would she not believe the information going forward to be correct?
- NHS BSA should have noticed that there was an anomaly in her pension contributions via its own checking system.
- There was no use for the pension estimates if a member could not rely on the accuracy of the figures provided.
- The error made by NHS BSA had a detrimental effect on her financially and personally.

35. NHS BSA's position:-

- Mrs S had been provided with almost 40 different estimates, most of which detailed the amount of added years membership included from the added years contract.
- Both Mrs S and Stockport NHS were sent confirmation on 18 February 2011 that the added years contract had been terminated. They were both notified that Mrs S had purchased 3 years 216 days of additional membership.
- It was not unreasonable to have suggested that with each increase to additional membership, above the level notified in 2011, either Mrs S or Stockport NHS should have made further enquiries regarding the information.
- Estimates were not routinely checked due to the sheer volume supplied by its systems, but members had been actively encouraged to review the information provided to them.

Stockport NHS' position:-

- It was unable to answer the queries it had been asked.



- The only involvement it had was to amend Mrs S' payroll accordingly once the added years contract had been terminated. It had amended her payroll as expected.
- If an employee had worked for another employer, it would have been unable to check the membership history, or the added years recorded. So, it was unreasonable to expect it to have checked each individual members details.
- It had limited access to make changes to a member's pension record and amending added years was not something it had access to.
- At the end of each year, it submitted the contributions both itself and the member had made onto NHS BSA's website. If there were any anomalies, such as the added years contributions not being submitted, it should have created an error.

## **Adjudicator's Opinion**

36. Mrs S' complaint was considered by one of our Adjudicators who concluded that NHS BSA should pay £500 for the significant distress and inconvenience caused. The Adjudicators findings are summarised in paragraphs 37 to 46 below.
37. Mrs S had terminated her added years contract on 18 February 2011 but due to an "end reason" error, all future estimates that had been generated for Mrs S had assumed that the added years contract would have been fulfilled.
38. Stockport NHS had appropriately performed its responsibility by cancelling any further contributions toward the purchase of added years in line with Mrs S' request. However, NHS BSA had failed to discharge its responsibility as it had selected the wrong contract end reason and was responsible for the issue arising.
39. After her added years contract had been terminated, Mrs S had received a confirmation letter, which stated that she had been credited 3 years 216 days of additional membership. In each estimate that had followed, from both Stockport NHS and NHS BSA, the added years figures had increased. Mrs S should have noticed the increase and queried the figures.
40. The Adjudicator noted that Mrs S had said she focused solely on the pension and Lump Sum figures and had not noted the change in added years because she expected the membership details to be correct. Each estimate provided a disclaimer which asked members to check the accuracy of the membership and pay figures. Mrs S should reasonably also have reviewed those figures.
41. Mrs S had also received two separate benefit estimates on 21 February 2020, one from Stockport NHS and the other from NHS BSA. The difference between the two figures had been £2,901.69 for her pension and £5,569.01 for her lump sum. The discrepancy between the two estimates should have been of sufficient concern to warrant Mrs S querying the information.

42. Mrs S had multiple opportunities to reasonably notice the inaccuracies in the information she had been provided with. It had not been reasonable for Mrs S to have relied on the figures that had been quoted in her estimates.
43. Neither Stockport NHS nor NHS BSA had been responsible for any direct financial loss to Mrs S as a result of incorrect information as it had been unreasonable for Mrs S to base her retirement on information that was clearly flawed.
44. Stockport NHS had discharged its responsibilities following the termination of the added years contract in a timely manner and had not exacerbated the issue. It had responded to Mrs S' queries with haste and had not contributed to any additional distress and inconvenience that Mrs S had experienced.
45. NHS BSA had provided Mrs S with a poor level of service. This was because:-
  - The initial issue had arisen due to an administrative mistake on NHS BSA's part.
  - The incorrect information had remained on Mrs S' pension record for more than nine years.
  - NHS BSA had assured members that it would provide a response to IDRPs complaints within 40 working days. NHS BSA had received Mrs S' complaint under stage one of the Scheme's IDRPs on 13 July 2020. Mrs S did not receive a response until 11 September 2020. So, NHS BSA had taken 45 working days to respond and so had failed to meet its service requirement.
  - When NHS BSA had delayed payment of Mrs S' June 2020 monthly pension payment due to a system error, it had taken over a week to provide Mrs S with an accurate payment date. It was unreasonable for Mrs S to have had to wait two weeks to receive her payment.
  - Mrs S had to request on three occasions, an explanation as to why her June 2020 payment had been delayed, before her query was addressed.
46. NHS BSA's provision of incorrect information and administrative failings would have caused Mrs S significant distress and inconvenience, so an award of £500 would have been in keeping with TPO's guidance on non-financial injustice.
47. Mrs S did not accept the Adjudicator's Opinion, and, in response, she reiterated her previous position and provided the following further comments. In summary she said:-
  - NHS BSA had admitted its error and it had been agreed that she had been disadvantaged as a result.
  - Stockport NHS had acknowledged, in writing, that the added years contract had been cancelled, so it had taken responsibility that its systems should have been updated accordingly. That, alongside the fact her pay had been altered correctly, led her to expect the information held on her pension record to be correct.

- Since all further estimates had been issued based on incorrect information, she had not seen any discrepancies.
- It was completely reasonable to base her retirement on the information given in the 21 February 2020 estimate because it was not flawed. The discrepancy between the two estimates received on that was due to the estimates being for different scenarios and did not warrant querying.
- She completely relied on the estimates to make her decision to retire. This was highlighted by the number of quotes she had requested.
- It was reasonable for her to have relied on the information held by NHS BSA which in turn meant she should have been able to rely on the pension estimates provided to her.
- She was not a pensions expert and should not have been reasonably expected to notice such an error. She had suffered considerable financial detriment as a result of these errors.

### **Ombudsman's decision**

48. Mrs S provided detailed submissions, which I have had the opportunity to review in full. Not all of those submissions are directly relevant to this complaint or within my jurisdiction. This Determination only directly addresses the key issues regarding her complaint.
49. Mrs S complained that she was provided with incorrect information in several inaccurate benefit statements. She said she relied on this incorrect information when deciding to retire.
50. Although Mrs S' estimates were based on incorrect added years figures, the correct information for the calculation of her pension was obtained before it was put into payment. I find that Mrs S is now in receipt of the correct amount of pension, in accordance with the Scheme Regulations. This means that she is not entitled to receive a higher level of Scheme pension. I acknowledge that Mrs S feels that her reliance on the information in the estimate received from NHS BSA on 21 February 2020 was justified. However, she had sufficient information available to her which should have caused her to reasonably question the accuracy of the estimates provided. It was therefore not reasonable for her to base her retirement planning on information which was clearly inaccurate and flawed.
51. While I understand that Mrs S requested a number of different estimates to determine the affordability of retirement, Scheme members still have a responsibility to scrutinise and question information provided to them where it is reasonably clear that the information is incorrect, unclear, or inconsistent. In this case, the warning caveats advised members to review the information, specifically in relation to service and salary information. Had Mrs S done so, it is reasonable to expect that she would have

noticed that an error had occurred and that the number of added years continued to increase. I find that it was unreasonable for Mrs S to have relied on the incorrect information to the extent that she did.

52. Mrs S said that she believed she could rely on the figures provided by NHS BSA and so only noted the available pension and lump sum figures quoted. While I accept that the amount of pension and lump sum available will have been the deciding and most important factor in Mrs S' decision making I note that on 29 March 2016, Mrs S received a membership statement which did not contain pension or lump sum figures, but specifically detailed her membership. The added years figure shown was 5 years 118 days, which clearly conflicted with her added years contract termination notice which stated she had purchased 3 years 216 days. Since there were no pension or lump sum figures to consider, it would have been reasonable for Mrs S to have noted at this time that there was a discrepancy and queried the amount of added years quoted.
53. While I do not find that it was reasonable for Mrs S to have relied on the incorrect figures, I accept that she has suffered a loss of expectation in that she thought her retirement benefits would be much higher than is actually the case.
54. I have also reviewed the poor level of service provided to Mrs S by NHS BSA. The period of time over which Mrs S was provided with incorrect information in conjunction with the late payment of her June 2020 pension payment and NHS BSA's failure to meet its own service requirements will have undoubtedly caused Mrs S serious distress and inconvenience. I find that a payment of £1,000 is appropriate recognition in the circumstances.
55. I uphold this complaint in part.

## **Directions**

56. Within 28 days of the date of this Determination, NHS BSA shall pay £1,000 to Mrs S for the serious distress and inconvenience she has experienced.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

24 April 2023