

## Ombudsman's Determination

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

## Outcome

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

## Complaint summary

2. Mrs B has complained that, on 10 November 2020, NHS BSA sent her an incorrect statement showing considerably overstated benefits available to her from the Scheme as at 31 March 2020.
3. Mrs B says that:-
  - She relied upon this statement to her financial detriment by leaving her NHS employment early.
  - She has suffered considerable distress and inconvenience dealing with this matter.

## Background information, including submissions from the parties

4. The Scheme is governed by the NHS Pension Scheme Regulations 1995 (as amended) (**the Scheme Regulations**).
5. Mrs B had three separate periods of NHS employment.
6. She received a refund of her contributions to the Scheme for her first period of membership between 11 November 1981 and 1 July 1984.

7. Mrs B joined the 1995 Section of the Scheme<sup>1</sup> on 14 December 1998 and left on 12 August 2003.
8. She re-joined this section on 2 February 2004. In 2008, she opted to become a member of the 2008 Section of the Scheme.
9. On 1 August 2020, Mrs B became an active member of the 2015 Scheme until her retirement on 31 March 2021.
10. Mrs B received numerous annual benefit statements over the years from NHS BSA showing what she might receive at retirement from the 2008 Section of the Scheme, based on information provided by her employer.
11. NHS BSA says that the statements issued to her during the period from 24 November 2015 to 2 November 2020 were correct. However, the one sent on 10 November 2020 was flawed because a “cost of living increase” had been applied by mistake to the pension and lump sum figures.
12. The estimated accrued benefits as at 31 March 2018 shown on the statements sent in January and May 2019 to Mrs B were as follows:
  - a pension of £5,327.19 per annum plus a mandatory lump sum of £6,156; or
  - a reduced pension of £3,754.41 per annum plus a maximum lump sum of £25,029.39 (including the mandatory element).

These figures were based on her reckonable pay of £18,617.21 per annum and pensionable service of 18 years 300 days.

13. In May 2019, Mrs B asked NHS BSA about the possibility of early retirement. NHS BSA provided her with the relevant details and informed her that her early retirement pension would be reduced to allow for the fact it would be paid for longer.
14. In September 2019 and January 2020, Mrs B received statements showing the following estimated accrued benefits as at 31 March 2019:
  - a pension of £5,811.26 per annum plus a mandatory lump sum of £6,348; or
  - a reduced pension of £4,075.88 per annum plus a maximum lump sum of £27,172.54 (including the mandatory element).

These figures were based on her reckonable pay of £19,191.55 per annum and pensionable service of 19 years 300 days

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<sup>1</sup> There are two schemes in place: the 1995/2008 Scheme and the 2015 Scheme. The 1995/2008 Scheme is a final salary arrangement. The 2015 Scheme is a career average revalued earnings scheme.

15. On 2 November 2020, Mrs B received a statement showing that the estimated accrued benefits as at 31 March 2020 were as follows:

- a pension of £6,407.59 per annum plus a mandatory lump sum of £6,624; or
- a reduced pension of £4,474.02 per annum plus a maximum lump sum of £29,826.81 (including the mandatory element).

These figures were based on her reckonable pay of £20,054.61 per annum and pensionable service of 20 years 300 days.

16. On 10 November 2020, NHS BSA sent Mrs B another statement detailing her estimated accrued benefits as at 31 March 2020. The figures shown were:

- a pension of £9,586.39 per annum plus a mandatory lump sum of £9,910.17; or
- a reduced pension of £6,693.58 per annum plus a maximum lump sum of £44,623.89 (including the mandatory element).

17. This statement included the following proviso:

“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...Exact figures for your retirement benefits cannot be given until such time as your final pay and service details are known and application for benefits has been made in accordance with the Scheme rules.”

18. On 22 December 2020, Mrs B telephoned NHS BSA to ask some questions about the latest statement. The note made of this call<sup>2</sup> by NHS BSA said that:

“Member rang to ask what the figures meant on the age estimate...adv on this, adv on aw8 and sla of 30 days.”

19. On 30 December 2020, Mrs B telephoned NHS BSA to seek help completing the retirement benefits claim form (**AW8 form**).

20. On 26 January 2021, NHS BSA received Mrs B's completed AW8 form which showed that she wished to take the maximum lump sum and reduced pension available to her from the Scheme.

21. NHS BSA calculated that Mrs B was entitled to the following actuarially reduced benefits on her early retirement date of 31 March 2021:

- a pension of £6,085.03 per annum plus a mandatory lump sum of £6,804; or

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<sup>2</sup> NHS BSA says that its recording of this telephone call is no longer available because it was deleted after being held for six months.

- a reduced pension of £4,276.30 per annum plus a maximum lump sum of £28,508.70 (including the mandatory element).

These figures were based on her reckonable pay of £20,602.64 per annum.

22. Mrs B was unhappy that the actual maximum lump sum and reduced pension payable to her from the Scheme were significantly lower than the amounts shown on the statement which she received on 10 November 2020.
23. In April 2021, she consequently made a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
24. In its Stage One IDRP decision letter dated 29 June 2021, NHS BSA partly upheld Mrs B's complaint. It accepted that it had sent her an incorrect estimate on 10 November 2020 and apologised to her for the distress and inconvenience caused by its mistake.
25. However, it also said that the benefits paid to her from the 2008 Section of the Scheme were in accordance with the figures shown on the statement sent on 2 November 2020 once the reduction for early payment was allowed for.
26. Mrs B was dissatisfied with this response. In particular, she said that NHS BSA had confirmed verbally several times, and in writing, that the figures shown on the flawed statement were correct.
27. In its Stage Two IDRP decision letter of 8 October 2021, NHS BSA concluded that:

“An incorrect estimate of pension benefits was provided to you on 10 November 2020, and I would like to apologise on behalf of NHS Pensions for this error. However, it is not unreasonable to suggest that when comparing the estimate provided on 2 November 2020 to that of 10 November 2020, an increase of around 49% is inordinate in such a short time frame. This may have been noted by you and further enquiries made to either NHS Pensions or your employer. After reviewing your pension record, I am unable to find trace of any such line of enquiry.

Although you maintain that based on the estimate provided you took the decision to retire, aside from the estimate of 10 November 2020, those issued previously have been consistent and cannot be ignored. The fact that you received an incorrect estimate does not confer the right to receive that level of benefits. Benefits can only be paid in accordance with the Scheme regulations and there is no discretion to override those regulations.”

**Mrs B's position**

28. Mrs B says that:

“The inaccurate information has left me in a position of loss to a material degree. I am financially worse off to the sum of several thousand pounds.

I was the sole financial income earner and had been for a number of years as my husband was forced to retire early through ill health.

We now find ourselves in a difficult position which has left us making personal and financial sacrifices which I believe is unfair and unreasonable.

This is wholly as a result of the inaccurate advice and forecasting which was provided to me.

If the correct information had been provided at the time of my employment it would have had a significant influence on my decision to retire.

I would also like to confirm that I contacted NHS Pensions on a number of occasions, and they confirmed the figures both verbally and in writing.

I have found this whole situation extremely stressful and upsetting and this has been caused by the misleading information which is having an impact on my health.”

29. NHS BSA's records of her telephone calls are incomplete and not sufficiently detailed.

30. During the telephone conversation on 22 December 2020. NHS BSA “definitely” confirmed that the lump sum available to her was £44,623.89.

**NHS BSA's position**

31. It has already apologised to Mrs B for sending the incorrect quotation to her on 10 November 2020. In its view, the distress and inconvenience which she has suffered because of its mistake does not warrant an ex-gratia payment.

32. Its reasons for saying this are as follows:-

- The anomalous figures shown on the flawed estimate were “disproportionate” to those previously supplied to her. Given the disparity between the figures, it is reasonable to expect that Mrs B would have noticed the error and brought it to its attention. According to its records, she did not do this.
- Mrs B did not request an early retirement quotation from it. So, she had based her decision to retire early on an incorrect type of estimate, that is an “age estimate”.

- It had supplied Mrs B with all relevant documentation to claim her early retirement pension from the Scheme. So, it should have been evident to her that a reduction factor would be applied to her benefits if she decided to retire early.
- According to its notes of the telephone calls with Mrs B, at no time did it inform her that the overstated figures shown on the erroneously quotation were correct.

33. It also says that:

“It is not unreasonable to suggest that taken as a whole, Mrs B may have considered the nine estimates provided to her, compared the latest one against her last estimate and may have noted the substantial increase, which was over £15,000 in respect of the lump sum. Given that she had received an estimate a little under eight days earlier for a lower amount, this may have led her to consider querying the estimate with either her employer or NHS Pensions...”

## **Adjudicator’s Opinion**

34. Mrs B’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 in paragraphs 35 to 52 below.
35. A complaint of negligent misstatement must be based upon an inaccurate statement, usually called a “representation”. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.
36. In this case, Mrs B had complained that she relied upon the statement sent to her on 10 November 2020 showing incorrectly overstated benefits available to her as at 31 March 2020 to her financial detriment.
37. In the Adjudicator’s opinion, this statement was not a clear and unequivocal representation. It included a disclaimer which clearly stated that:-
- The benefits quoted were estimates only and not guaranteed.
  - NHS BSA would inform her of the actual retirement benefits available calculated in accordance with the Scheme Regulations once she had made a formal application and it had her final pay and service details to work them out.
38. In the Adjudicator’s view, it was consequently clear that if Mrs B decided to enter any financial commitment based on the figures shown on this statement, she would do so at her own risk.
39. Although Mrs B received incorrect details of the benefits available to her from the Scheme, it did not confer on her a right to these benefits quoted by mistake. If she

had acted to her financial detriment based on the reasonable belief that the figures were correct, then she might be compensated for the harm.

40. Mrs B contended that she would have continued working if the error had been brought to her attention by NHS BSA before she made her decision to retire early. In this case, the loss that Mrs B could claim was loss of income and other benefits that she would have received had she remained in employment until such time as she would have retired.
41. But if Mrs B suspected that she may have suffered a loss, she had a responsibility to take reasonable steps to mitigate her loss by attempting to return herself as near as possible to the position she would have been in. Then to the extent that she could have mitigated, she could not claim that she has suffered a loss as a result of the mistake made by NHS BSA.
42. However, the Adjudicator had seen no evidence that Mrs B had attempted to seek any form of employment that might make up the shortfall in her salary and benefits. Given Mrs B's circumstances, the Adjudicator appreciated that it might have been difficult for her to do so, but, in his view, the Pensions Ombudsman would expect her to have taken reasonable steps to at least try mitigating her loss.
43. NHS BSA was entitled to assume that Mrs B would conduct her financial affairs with ordinary due diligence. In the Adjudicator's view, it was reasonable to expect that she would have compared the figures provided in the statement sent to her on 10 November 2020 with those she had previously received which were correct.
44. It was incumbent upon any member of a pension scheme to ensure that, if fundamentally flawed data was displayed in benefit statements, the relevant person or department be notified so that corrections could be made.
45. While there was no dispute that Mrs B had asked NHS BSA about the figures shown on the statement sent to her on 10 November 2020, the Adjudicator had seen no evidence that she had explicitly pointed out the differences to it. If Mrs B had done so, the obvious error would have come to light much earlier and she would not be in the unfortunate position which she now found herself.
46. In the Adjudicator's view, Mrs B acted to her financial detriment based on an unreasonable belief that the figures shown on the erroneous statement were correct. It was consequently the Adjudicator's opinion that Mrs B had not suffered any actual financial loss based on the decision which she made for which she should be compensated.
47. So it was the Adjudicator's opinion that there had been no negligent misstatement by NHS BSA.
48. Like negligent misstatement, a complaint of estoppel must be based upon an inaccurate statement, usually called a "representation". As set out above, it was the Adjudicator's opinion that there has been no relevant representation. NHS BSA was

consequently not estopped from paying the correct benefits in accordance with the Scheme Regulations.

49. The Adjudicator had also considered whether the flawed information constituted maladministration which had resulted in any non-financial injustice such as distress and inconvenience. Even where it was recognised that maladministration had occurred this did not always result in a payment for non-financial injustice.
50. There was no dispute that NHS BSA provided Mrs B with incorrect information on 10 November 2020 concerning the accrued benefits available from the Scheme as at 31 March 2020. Mrs B should have been given the correct figures and the failure to do so was clearly maladministration on the part of NHS BSA.
51. Although it was the Adjudicator's opinion that Mrs B had not suffered any financial loss because of the maladministration identified above, it was clear that she had experienced distress and inconvenience. NHS BSA was unwilling to offer Mrs B a modest award in recognition of this and had given its reasons for saying this, as summarised in paragraphs 32 and 33 above.
52. The Pensions Ombudsman's awards for non-financial injustice start at £500 for significant distress and inconvenience. Having carefully considered the submissions and evidence, the Adjudicator agreed with NHS BSA that the degree of non-financial injustice which Mrs B had suffered was not sufficient to warrant the minimum payment from the Pensions Ombudsman.
53. Mrs B did not accept the Adjudicator's Opinion and provided her further comments. She said that:

“As I stated before, I contacted the NHS Pension team and had the figures verbally confirmed to me.

My only regret is that not all of the conversations have been recorded and noted correctly/fully and discrepancies exist. I wish to remind you that these were not normal times during a pandemic with people working from home etc.”
54. NHS BSA replied and said that:
  - It accepted the Adjudicator's Opinion and agreed that the “threshold” for the minimum payment of £500 which the Pensions Ombudsman could award for non-financial injustice had not been met.
  - However, it would like to offer to Mrs B on an exceptional basis an ex-gratia award of £500 in recognition of the distress and inconvenience which she has suffered dealing with this matter.
55. Mrs B chose not to accept the ex-gratia payment and her complaint was passed to me to consider.



56. NHS BSA has said this ex-gratia award is still available to Mrs B even though she has decided to request a Determination of her complaint by me.
57. I note the additional points raised by Mrs B, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

58. While there is no dispute that there has been maladministration on the part of NHS BSA, the starting point is that Mrs B is only entitled to the benefits provided by the Scheme Regulations. Exceptionally, in cases where incorrect information has been given, redress will be provided if it can be shown that financial loss or non-financial injustice has flowed from reliance on that incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
59. I have considered carefully whether it was reasonable for Mrs B to have accepted the overstated figures that were sent to her on 10 November 2020 for the estimated benefits available to her as at 31 March 2020 as correct. I fully appreciate Mrs B's points of view on this matter, but I have concluded that it was not reasonable, for essentially the same reasons given by the Adjudicator.
60. Mrs B contends that NHS BSA confirmed to her verbally on several occasions that the incorrect figures were accurate. I have, however, seen no clear evidence which substantiates her contention. What is clear is that Mrs B received, around a week earlier on 3 November 2020, a correct statement of her estimated accrued benefits from the Scheme calculated as at 31 March 2020. The figures shown for her pension and lump sum options on that statement were noticeably lower than those on the incorrect one.
61. NHS BSA was entitled to assume that Mrs B would conduct her financial affairs with ordinary due diligence. I consider it was reasonable to expect that Mrs B would have compared the corresponding figures shown on the two statements and noticed the marked differences between them.
62. If Mrs B had done this and brought the discrepancies to the attention of NHS BSA, the error would have come to light much earlier and she would not be in the unfortunate situation which she now finds herself.
63. Although I sympathise with Mrs B's circumstances, I do not find that Mrs B has suffered any actual financial loss. However, it is evident to me that she has experienced some distress and inconvenience because of the maladministration identified.

64. I note that NHS BSA has sincerely apologised to Mrs B for its mistake. However, it considers that the non-financial injustice which she has suffered is insufficient to merit the minimum payment of £500 which I could award under such circumstances.
65. When deciding whether to direct an award for non-financial injustice, I assess each case on its facts and merits. My awards for non-financial injustice are modest and not intended to punish a respondent.
66. Having carefully considered the submissions and evidence, in light of my conclusions above, I find that the degree of non-financial injustice which she has suffered does not warrant my minimum award of £500. I consider that the sincere apology which she has already received from NHS BSA to be adequate.
67. However, as a gesture of goodwill towards Mrs B, I note that NHS BSA has now decided to offer her on an exceptional basis an ex-gratia award of £500 in order to try settling her complaint amicably. This offer is still open to Mrs B and if she now wishes to claim it, then she should complete and return the relevant form to NHS BSA.
68. I do not uphold Mrs B's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
5 October 2023