

## Ombudsman's Determination

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

### Outcome

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

### Complaint summary

2. Mr R's complaint concerns NHS BSA's procedures. Specifically, NHS BSA has set "rules" that put members applying for ill health pension under financial pressure to accept Actuarially Reduced Early Retirement (**ARER**).

### Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. The relevant regulations are the National Health Service Pension Scheme Regulations 1995 (SI1995/300) (as amended) (**the 1995 Regulations**).
5. Regulation E2A, sets out the conditions that a member must satisfy to be entitled to an ill health pension on early retirement. Regulation E5, sets out the conditions for early retirement pension with actuarial reduction.
6. After going on long term sickness absence in December 2016, Mr R applied for ill health pension in January 2017. He subsequently complained to The Pensions Ombudsman (**TPO**) that NHS BSA had not considered his application in a proper manner. The complaint was considered by one of TPO's Adjudicators (**the First Adjudicator**).
7. In May 2018, the First Adjudicator issued her Opinion on the complaint. However, she did not agree that the complaint could be upheld.

8. In summary, the First Adjudicator said:-

- The views expressed by the OH Assist doctors were “not inconsistent” with the medical evidence available at the time. However, the final stage of the appeal process was completed in November 2017. Mr R’s employment did not cease until March 2018. “It is this later date at which he would be required to meet the tier 1 or 2 conditions”.
- Mr R had provided additional evidence that indicated that he was now under the care of a psychiatrist and management of his condition had moved on. It would be appropriate for NHS BSA to ask OH Assist to review his eligibility for benefits under regulation E2A as at March 2018.
- Regulation T1: “Claims for benefits” of the 1995 Regulations, requires Mr R to make a written claim for benefits “in such form as the Secretary of State may from time to time require”. So, it may be the case that NHS BSA will require him to complete another application for ill health retirement (**AW33E**) form.

9. At the time, Mr R said that his initial reaction was to submit a new AW33E. However, he did not consider that it would be in the best interests of his mental wellbeing to pursue this course of action. So, he asked NHS BSA to process his application for ARER and backdate it to March 2018. The Adjudicator noted that NHS BSA was happy to proceed on this basis. So, the Adjudicator closed the investigation.

10. On 3 September 2019, Mr R submitted a further application to TPO. He explained that due to the lengthy “claim process,” he felt compelled to accept ARER. So, he was effectively unable to follow the Adjudicator’s recommendations. Had he not accepted ARER, this would have caused him financial difficulties and his mental health would have further deteriorated.

11. Regarding his previous complaint, Mr R explained that he was diagnosed with Schizotypal disorder, post-traumatic stress disorder, depression, agoraphobia, anxiety disorder and dissociative attacks. In his view, his mental health conditions were disregarded by NHS BSA because his application for ill health retirement was not assessed by health professionals trained in psychology or psychiatry.

12. NHS BSA has explained that it cannot consider a further application for ill health retirement because Mr R has claimed his benefits under Regulation E5.

### **Adjudicator’s Opinion**

13. Mr R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator’s findings are summarised below:-

- Mr R had restated that his application for ill health retirement was mismanaged by NHS BSA. The Adjudicator explained that the new separate complaint concerning

NHS BSA's procedures had been accepted for investigation and her Opinion only addresses this complaint.

- The Adjudicator noted that Mr R was previously given the opportunity to proceed on the basis recommended by the First Adjudicator and submit a new AW33E.
  - However, Mr R effectively asked for his retirement benefits to be calculated under Regulation E5 and the parties agreed to proceed on this basis. In the Adjudicator's view, there would have been sufficient information on NHS BSA's website that would have alerted Mr R to the implications of claiming an ARER.
  - The Adjudicator highlighted that NHS BSA cannot pay an ill health pension unless the relevant conditions are satisfied. While she sympathised with Mr R's position, she was not of the view that NHS BSA's conduct in this case amounted to maladministration.
14. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. He said that:-
- Initially, he did not want to get involved in the investigation because he knew it would affect his mental health.
  - The views the Adjudicator expressed in the Opinion were expected. It is ironic that the very reason he accepted a reduced pension was the time it would take for an appeal to be reviewed. If he had waited for the outcome of the review, he would have been without an income and would probably have lost his home.
  - He is still of the view that NHS BSA "hold staff to ransom." However, as long as it does this in the "correct way" TPO will support NHS BSA.
15. I note the additional points raised by Mr R but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

16. Mr R is receiving an actuarially reduced early retirement pension under Regulation E5. The outcome he is seeking is for NHS BSA to consider a further application for ill health retirement under Regulation E2A.
17. Mr R has explained that, had he accepted the First Adjudicator's recommendations, he would have had no income while NHS BSA were making a fresh decision. I sympathise with the difficult circumstances he has described. Unfortunately, this does not change the position.
18. I agree with the Adjudicator that NHS BSA cannot pay an ill health pension unless the relevant conditions are satisfied.
19. I am not persuaded on reviewing the evidence that NHS BSA's appeals procedure has been shown to be unfair or unjust.

CAS-37266-F1D9

20. I do not uphold Mr R's complaint.

**Anthony Arter**

Pensions Ombudsman  
3 January 2023