

## Ombudsman's Determination

Applicant	Ms R
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	University Hospitals of Leicester NHS Trust ( <b>the Trust</b> ) NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. Ms R's complaint is upheld and, to put matters right, the Trust shall follow the Directions set out in paragraphs 25 to 28.

## Complaint summary

2. Ms R complained that the Trust failed to action an Additional Pension (**AP**) arrangement that she tried to set up in February 2015. It was not set up, although payments were taken from her.

## Background information, including submissions from the parties and timeline of events

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. On 5 October 2009, Ms R joined the 2008 section of the Scheme. This has a retirement age of 65.
5. On 9 February 2015, Ms R contacted the Trust to ask about the purchase of an AP. She was directed to the Scheme's website and AP calculator. Ms R wanted an AP of £1,000 per year to be payable when she reached age 60. She said the online calculator indicated she would need to pay £125.20 per month for seven years. She said she completed form AP1 (**the Form**), sent it to the Trust and payments started to be taken from her in March 2015.
6. On 1 April 2015, Ms R became a member of the 2015 section of the Scheme. The retirement age for this section of the Scheme is the member's State Pension Age.

7. On 4 July 2019, Ms R contacted NHS BSA as she had received a pension statement but there was no record of the AP. She was told by NHS BSA that information regarding the AP remained outstanding from the Trust.
8. Ms R complained to NHS BSA about the AP not being set up and, on 16 October 2019, it wrote to her under Stage One of the Internal Dispute Resolution Procedure (**IDRP**). It said for her to have set up an AP, she would have had to partially complete the Form and pass it to the Trust to complete and send to it. However, NHS BSA said it did not receive the Form and therefore had no record of an AP purchase for her. It also said, that as she was a member of the 2015 section of the Scheme when she said she submitted the Form, she could not have taken an AP contract for payment at age 60, as the retirement age for this section was 65.
9. Ms R was not happy with the response from NHS BSA and asked for her complaint to be considered under Stage Two of the IDRP.
10. On 18 November 2019, NHS BSA responded to Ms R under Stage Two of the IDRP. In summary, it said:-
  - It had no record of receiving the Form, nor of any payments being received from Ms R in relation to the AP she understood she had set up.
  - It had spoken to the Trust in June 2017, about the purchase of the AP, and, the Trust had confirmed Ms R had been paying additional contributions of £125.20 per month since March 2015. However, NHS BSA said it had no record of these payments on Ms R's pension record and it had not received the Form to set up the AP.
  - It was not until 3 April 2019, when the Trust inputted information about the AP contributions, that it contacted the Trust to query the information provided.
  - As a cost for payment to be paid at age 60 was provided to Ms R in March 2015, she may have selected an incorrect section of the Scheme when she completed the online calculator. This was because only members of the 1995 section of the Scheme can purchase AP for payment at age 60. The correct, increased, costs to purchase an AP effective from March 2015 were provided.
  - From 1 April 2019, the cost to purchase AP was revised and the monthly amount to continue purchasing AP for retirement at age 65 increased.

## **Ms R's position**

- She sent the Form for the AP to the Trust, and it must have been correct as payments had been taken.
- If an AP was now set up retrospectively, it would be unreasonable for her to pay any arrears.

- The subject of the complaint is whether it is reasonable for NHS BSA to expect her to pay additional contributions.
- The first time she was told the online calculator was not working was when she received the formal response from NHS BSA.
- The Trust was required to update her pension record annually and failed to do so. Had it done so correctly, the issue would have been resolved in 2015.
- She approached the Trust about setting up a backdated AP but heard nothing for several months.
- She has endured years of distress and inconvenience due to this matter.
- NHS BSA offered two recalculations. The Trust processed a new AP contract in November 2019, which bought £1,000 of AP, based on payments of £125.20 per month. The term was altered to six years and the benefits could be taken when she reached age 65, which despite still being incorrect compared to her original agreement, she agreed to and signed the necessary paperwork. However, the Trust failed to enact it, refused to respond to her and tried to change the terms again.
- She has paid monthly payments of £125.20 for seven years. She had to ask the Chief Executive of the Trust to stop its payroll department from taking the payments as the staff involved would not respond and were rude to her.

### **NHS BSA's position**

- It was unable to uphold the complaint as it did not receive the completed Form from the Trust.
- As Ms R was a member of the 2008 section of the Scheme at the time she originally applied for the AP, she could not have taken a contract for payment at age 60, as the normal retirement age was 65.
- At the time Ms R said she used the online calculator in February 2015, its records show the AP calculator was offline.
- When an application for AP is accepted, it writes to the member and employer confirming the amount being purchased. If the member chooses to pay by instalments, notification also provides details of the monthly amount and number of monthly payments to be made.
- It has no record of the additional payments on Ms R's pension statement.
- It is happy to provide an AP purchase backdated to March 2015, but any shortfall in contributions must be recovered from Ms R.

## **The Trust's position**

- When Ms R wanted to begin the AP in February 2015, the cost quoted for the level she wanted was £125.20 per month, which was subject to ongoing review.
- The AP was not established in 2015 but monies were deducted on an ongoing basis.
- NHS BSA had told it Ms R could retrospectively commence the AP as if it had been done in 2015.
- It had no knowledge of the contact with NHS BSA in 2017, otherwise the matter would have been resolved then.
- If Ms R did not want to proceed with the AP, she could have a refund of her contributions.
- If Ms R wanted to proceed with the new increased costs of the AP, it could discuss a payment plan.
- It has tried to locate the Form Ms R completed but has been unsuccessful. So, it is unclear whether or not the Form was sent to NHS BSA.
- It is holding the additional contributions taken from Ms R while awaiting a resolution.
- It fully supports the outcome that Ms R should be offered either to set up the AP on the terms available in 2015, or a full refund.

## **Adjudicator's Opinion**

11. Ms R's complaint was considered by one of our Adjudicators who concluded that Ms R had submitted the Form to the Trust for the AP and that the Trust had not completed the Form and sent it to NHS BSA. In the Adjudicator's opinion, an error had occurred, and the Trust was responsible. The Adjudicator's findings are summarised below:-

- Ms R submitted the Form to the Trust for the AP, as the Trust deducted payments from her.
- The Trust had not completed the Form and sent it to NHS BSA for the AP to be set up on the terms Ms R agreed in 2015.
- In 2017, NHS BSA told the Trust that it had not received the Form, but the Trust had not acted on this.

- In July 2019, NHS BSA told Ms R there was information outstanding from the Trust, which was why her pension statement did not show the AP. So, it appeared no action had been taken by the Trust between 2017 and 2019.
  - NHS BSA cannot be held responsible for the fact that the AP was not set up as it did not receive the Form. The Adjudicator took the view that the failure by the Trust to properly set up the AP arrangement amounted to maladministration.
  - Neither NHS BSA nor the Trust can be held responsible that an incorrect amount was quoted although the matter would have come to light sooner had the Trust processed the application in 2015.
  - If Ms R wants to backdate the AP arrangement to 2015, she will need to pay the additional amount required to achieve this. If she does not want to pay the additional amount, she has the option of having the contributions refunded to her. Ms R had been proactively trying to set up the AP over a prolonged period of time and even agreed to alternative terms to try and resolve the matter. However, the Trust did not set up the AP, adding to Ms R's frustration.
  - In the Adjudicator's view, Ms R had suffered serious distress and inconvenience due to the Trust's maladministration. An award of £1,000 was appropriate in the circumstances.
12. NHS BSA and Ms R agreed with the Adjudicator's Opinion, but the Trust did not and the complaint was passed to me to consider.
13. The Trust provided further comments in response to the Opinion. In summary it said:-
- It is completely reliant on NHS BSA for the terms of any offer for the Scheme members. It simply acts as an administrator for the Scheme.
  - It has no knowledge of the contact in 2017 otherwise this matter would have been resolved then. NHS BSA and the employee also had the ability to raise this.
  - It has not been party to the discussions and correspondence between Ms R and NHS BSA in relation to this dispute. This has been a very significant factor and severely hampered its ability to resolve this matter much earlier.
  - The events of the COVID-19 pandemic impacted the operating efficiency during 2020 and 2021, which has hampered the resolution which it believed impacted all parties.
  - It offered to set up the resolutions offered by NHS BSA, but Ms R refused stating that NHS BSA had offered different terms directly. It was not party to these and therefore powerless to resolve the situation. It did, however, liaise extensively in an attempt to reach resolution but this was hampered by fixed communications and escalation channels prescribed by NHS BSA.

- It fully supports the outcome that Ms R should be offered either to set up the terms offered by the NHS BSA or a full refund. These are effectively what it has been offering to Ms R for some considerable time which would have concluded this matter.
- It did stop the payments at the end of the understood term. Ms R refused to allow the payments to stop or be paused, all of which was discussed with Ms R and was her choice.
- There was an issue with the administrative procedure when the application was made and it apologised for this. When this came to light it took extensive and ongoing steps to try to resolve this but in its role as the administrator it was reliant on NHS BSA to assist with the resolution. The complexities, lack of transparency and consistency were the true cause of the inability to resolve this rapidly.

14. Ms R provided her further comments. In summary she said:-

- There is evidence supplied from a Freedom of Information request that the Trust was contacted by NHS BSA in 2017. It was also required to annually update her pension record and failed to do so. Had it done so correctly, the issue would have been resolved in 2015.
- Neither party informed her at any point there was an issue and contributions were taken as per the contract. The error was only raised following her discovery in 2019 that the contributions had not been applied to her pension.
- When she approached the Trust in September 2019, for help to settle the matter, she clearly outlined that she had been in contact with NHS BSA. She had been asked for thousands of pounds to resolve the issue, which she was not happy with.
- The Trust did not process the resolution in 2019, with huge periods without communication, and then a further variation to the proposed terms of resolution. There had never been any options for payment flexibility offered which involved the Trust bearing costs. If any communication suggesting alternative resolution terms were sent to the Trust from NHS BSA this was never communicated to her.
- When she tried to stop the payments being taken, she had to contact the Chief Executive of the Trust to intervene and enforce the stopping of the payments.

15. I have considered the additional points raised by both the Trust and Ms R, however, they do not change the outcome. I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

16. Ms R complained that the Trust failed to action an AP arrangement that she tried to set up in February 2015. It was not correctly set up with NHS BSA, although the Trust took payments from her.
17. The available evidence supports the view that the Trust received the Form, otherwise it would not have taken payments from Ms R. NHS BSA has confirmed that the form was not received by it and that no AP had been set up for Ms R. I find, on the balance of probability, that the Trust failed to complete and forward the Form to NHS BSA.
18. The Trust said it had no knowledge of the contact with NHS BSA in 2017, otherwise the matter would have been resolved then. NHS BSA has said the contact with the Trust was on 28 February 2017, by telephone, but it has not got a copy of the recording. However, its contemporaneous notes recorded that Ms R's employer telephoned and it was advised there was no AP contract set up for Ms R.
19. I am satisfied that there was contact between the Trust and NHS BSA in 2017, regarding the AP. While NHS BSA said, in its letter to Ms R of 18 November 2019, that the contact with the Trust was in June 2017, its records show there was contact with the Trust in February 2017. This further persuades me that the Form was not completed by the Trust in 2015 and passed to NHS BSA. It also persuades me that the Trust was aware in 2017, that the AP had not been set up.
20. From the available evidence I find that there was no action by the Trust between 2017, when it was told by NHS BSA that there was no AP in place for Ms R, and 2019 when Ms R learned from her pension statement that the AP had not been set up. This inaction amounts to maladministration by the Trust.
21. There have been attempts by all parties to try and resolve the matter and to retrospectively place Ms R in the position that she would have been in had the error not occurred. I accept the COVID-19 pandemic would have had an impact on this. However, the main issue is that Ms R would not be in this position had the Form she submitted in February 2015, been completed by the Trust and passed by it to NHS BSA for the AP to be established.
22. NHS BSA has said it has no record of receiving the Form and the Trust has said it has been unable to locate the Form Ms R completed for the AP. The Trust has said it is unclear whether the Form was sent to NHS BSA. As it does not appear the Trust sent the Form to NHS BSA and as the Trust is also responsible for updating Ms R's pension record, I find, on the balance of probability, there was no maladministration on the part of NHS BSA.
23. I have no doubt that the Trust's failure to submit the AP form to NHS BSA in 2015 followed by its subsequent inaction between 2017 and 2019 will have caused Ms R distress and inconvenience. I consider the distress and inconvenience Ms R has suffered is serious and warrants an award of £1,000.

24. I uphold Ms R's complaint against the Trust.

## **Directions**

25. To put matters right, the Trust shall, within 28 days of the date of this Determination:-

- Pay Ms R £1,000 for the serious distress and inconvenience caused.
- Liaise with NHS BSA to establish the cost of retrospectively implementing the AP arrangement on the terms that were available to Ms R, as a member of the 2008 section of the Scheme, in February 2015.

26. Within 14 days of receiving details of the cost from NHS BSA, the Trust shall provide Ms R with details of the additional amount she would be required to pay, along with an appropriate payment plan, after deducting the contributions it currently holds for her.

27. Within 14 days of receiving Ms R's confirmation that she wishes to proceed with the retrospective AP arrangement, the Trust shall liaise with NHS BSA to implement the AP arrangement and pay the contributions it holds to NHS BSA. If there are funds held by the Trust in excess of those required to meet the cost of the AP, the Trust shall return these to Ms R.

28. If Ms R confirms that she does not wish to proceed with the AP arrangement, the Trust shall, within 14 days of receiving Ms R's confirmation, refund the contributions it holds for her together with interest at the base rate for the time being quoted by the Bank of England, from the date each contribution was paid, to the date of calculation.

**Anthony Arter**

Pensions Ombudsman  
2 November 2022