

Ombudsman's Determination

Applicant	Dr A
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

2. Dr A has complained that he was misinformed by NHS BSA that it would complete an application for Lifetime Allowance (**LTA**) Individual Protection (**IP**) 2014 on his behalf. The application did not take place and Dr A missed the deadline, meaning he was unable to protect his LTA up to a value of £1.5 million.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.
4. On 7 May 2015, Dr A telephoned NHS BSA. After completing NHS BSA's security questions, Dr A passed control of the call to his independent financial advisor (**the IFA**). NHS BSA's call notes record that Dr A's recent pension benefit valuation and the possibility of him applying for IP 2014 were discussed. NHS BSA referred the IFA and Dr A to the Scheme's website for further information. It explained that if another valuation was requested within 12 months, this would be chargeable.
5. On 23 November 2016, Dr A telephoned NHS BSA. NHS BSA's call notes are very brief but indicate that the deadline to apply for IP 2014 was discussed. The notes also record that NHS BSA followed up the call with an email to Dr A, which included a website link to information about IP 2014 and the associated charges.

6. On 16 December 2016, Dr A telephoned NHS BSA (**the December 2016 Call**). Dr A has confirmed that the IFA was present during the call. A recording is not available, but NHS BSA's notes indicate that it explained to Dr A what he needed to do regarding an application for IP 2014. It also confirmed that his pension statement was available. NHS BSA has no further notes for this call.
7. Dr A has provided his recollection of the December 2016 Call. He said NHS BSA informed him that it could apply for IP 2014 on his behalf, in time for the deadline of 5 April 2017. He said he understood from the conversation that he needed to return the relevant form for IP 2014 and pay an administration fee, then NHS BSA would complete the application process for him.
8. On 5 January 2017, NHS BSA received an IP 2014 Practitioner Valuation request form from Dr A. The form did not include any reference to an application for IP 2014 being made by NHS BSA on Dr A's behalf.
9. On the same day, NHS BSA wrote to Dr A to explain that from 13 July 2016, it had introduced a charging structure for the benefit valuations it provided. It explained that in addition to submitting his request for an IP 2014 valuation, Dr A would need to pay the appropriate fee. NHS BSA would then issue the requested information within 40 working days. It said it would take no further action until clear instruction had been received from Dr A.
10. On 12 January 2017, Dr A resubmitted his request for a valuation of his Scheme benefits to NHS BSA, with a cheque payment for £120 enclosed.
11. On 17 March 2017, NHS BSA wrote to Dr A. It acknowledged his request for a valuation of his Scheme benefits, for the purposes of IP 2014. The total value of Dr A's Scheme benefits, as of 5 April 2014, was quoted as £1,653,083.83 (**the IP 2014 Valuation**).
12. The deadline to apply for IP 2014 was 5 April 2017.
13. On 24 April 2017, Dr A telephoned NHS BSA. NHS BSA's call notes record that Dr A asked about the process for claiming his benefits from the Scheme. There is no record of a discussion about IP 2014 during this call.
14. On 5 April 2019, Dr A telephoned NHS BSA. NHS BSA's call notes record that Dr A again asked about the process for claiming his benefits from the Scheme. There is no record of a discussion about IP 2014 during this call.
15. On 10 April 2019, Dr A telephoned NHS BSA. NHS BSA's call notes record that it recommended that Dr A contact HM Revenue & Customs (**HMRC**) to discuss his LTA protection and any associated certificates. NHS BSA confirmed it would not be responsible for issuing these certificates.

16. Later that day, Dr A telephoned NHS BSA. NHS BSA's call notes record that Dr A requested that it reissue the IP 2014 Valuation.
17. On 11 April 2019, NHS BSA sent a copy of the IP 2014 Valuation to Dr A.
18. On 23 May 2019, Dr A wrote to NHS BSA to register a complaint under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). He explained that he had telephoned NHS BSA on 16 December 2016 to request a valuation of his Scheme benefits. This was with the original intention of completing the application for IP 2014 himself. Dr A said NHS BSA confirmed that it would aim to issue a valuation by the end of March 2017. He was concerned that this would leave him little time to apply for IP 2014 before the deadline. However, he said that NHS BSA then proceeded, during the December 2016 Call, to inform him that it could apply for IP 2014 on his behalf. Dr A was happy to proceed on this basis, so paid the fee that he believed covered NHS BSA's administration of his application for IP 2014.
19. Dr A explained that he did not receive the IP 2014 Valuation when it was originally issued, on 17 March 2017. He said that he had since been in touch with HMRC and had learnt that an application for IP 2014 was not registered in his name. He considered that NHS BSA had misinformed him regarding its commitment to complete the application on his behalf. He said he now faced a significant tax charge, due to the value of his pension benefits being in excess of his LTA.
20. On 19 July 2019, NHS BSA wrote to Dr A with its response at stage one of the IDRP. It explained that Scheme members who wished to apply for IP 2014 would need to have completed an application through HMRC's website. It said its policy was that it would not apply for IP on behalf of Scheme members.
21. NHS BSA confirmed that while it does record its telephone calls with members, these recordings are only retained for six months; it also holds call notes on file. NHS BSA considered that its notes for the December 2016 Call showed no evidence that it offered to undertake an IP 2014 application on Dr A's behalf.
22. On 9 January 2020, Dr A wrote to NHS BSA. He was disappointed that there was not a recording of the December 2016 Call and asserted that NHS BSA's call notes were inadequate. He said that he was misled during the call about the actions NHS BSA would carry out.
23. Dr A explained that he did not receive the IP 2014 Valuation until 11 April 2019. He said he was initially unconcerned by his lack of this information, as his understanding was that NHS BSA was going to apply for IP 2014 on his behalf, a service for which he said he had paid a fee. He believed that it was not necessary for him to have applied directly to HMRC for IP 2014 and it would have been possible for NHS BSA to have done this. Dr A said that the failure to secure an application for IP 2014 meant that his annual pension income had been reduced by £12,996.08. His position was that NHS BSA should make up this shortfall.

24. On 13 January 2020, NHS BSA wrote to Dr A to acknowledge his request to move the complaint to stage two of the IDR. It said it would issue a response within 40 working days of the receipt of his request.
25. On 5 March 2020, NHS BSA issued its stage two IDR response. It referred to the HMRC Pensions Tax Manual guidance PTM094200 and PTM094210, relating to IP 2014 and IP 2016 respectively. NHS BSA considered that HMRC's guidance set out the process that Dr A was required to follow in order to apply for IP.
26. NHS BSA said it did not have access to all the information that would have been needed to make an application for IP on Dr A's behalf. It also said that Dr A had not given it authority to act on his behalf, nor did he provide it with access to his Government Gateway account. NHS BSA referred to the IP factsheets, which were available on the Scheme's website. NHS BSA considered these factsheets set out the application deadline for IP and that the member would need to apply directly to HMRC, because the protection was based on the member's total pension benefits.
27. NHS BSA confirmed it did not have recordings of the telephone calls it held with Dr A on 7 May 2016, 23 November 2016, and 16 December 2016. However, it said its call notes demonstrated that Dr A was not told that NHS BSA would complete an application for IP on his behalf.

Dr A's position

28. He has applied for IP 2016, but the complaint concerns the failure to meet the deadline to apply for IP 2014 and what he considers to be NHS BSA's responsibility for this deadline being missed.
29. His understanding from the December 2016 Call was that if he agreed to pay an administration fee, NHS BSA would submit an application for IP 2014 on his behalf.
30. NHS BSA cannot provide a recording of the December 2016 Call and it has relied on its system notes, which are very brief.
31. The IFA made written notes during the December 2016 Call, but unfortunately, it has not been possible to retrieve a copy of these notes. He has submitted details of the IFA's recollection of the December 2016 Call and the events preceding the call, which are summarised as follows:-
 - The IFA set out that he and Dr A had met in December 2016, prior to the December 2016 Call, and he had advised Dr A that he should apply for IP 2014.
 - The IFA said he explained to Dr A that he would need to obtain a valuation of his Scheme benefits in order to submit an application for IP 2014. The IFA would not submit the application on Dr A's behalf.

- During the December 2016 Call, NHS BSA explained that due to the volume of valuation requests, it was unlikely to be able to issue Dr A's valuation until the latter half of March 2017. The IFA was concerned that this would leave insufficient time for Dr A to complete an application for IP 2014, but NHS BSA then offered to apply on behalf of Dr A if he completed the form and paid the administration fee. The IFA said that Dr A gave his consent for NHS BSA to proceed on this basis.
- The IFA considered that Dr A was made a clear promise by NHS BSA that it would submit an application for IP 2014 on his behalf.

NHS BSA's position

32. It cannot provide a copy of the emails it sent to Dr A, following the telephone calls of 7 May 2015 and 23 November 2016.
33. It is an individual Scheme member's responsibility to apply for LTA protection, such as IP 2014, through HMRC's website.
34. It would never apply for LTA protection on behalf of a Scheme member. It is not authorised to act as a financial advisor, nor would it have the necessary information, including details of any benefits the member held outside the Scheme.
35. The cheque for £120, received from Dr A on 12 January 2017, represented payment for the additional administration it carried out in relation to the provision of the IP 2014 Valuation.

Adjudicator's Opinion

36. Dr A's complaint was considered by one of our Adjudicators, who concluded that no action was required by NHS BSA. The Adjudicator's findings are summarised below:-
 - NHS BSA's notes for the December 2016 Call are limited, but Dr A was unable to provide the IFA's contemporary notes for the call. Dr A and the IFA have given their recollections of the events that took place.
 - NHS BSA would have required additional information, about any pension benefits Dr A held outside the Scheme, to have been in a position to administer an application for IP. This information did not appear to have been discussed as part of the correspondence for the case.
 - There was insufficient evidence to conclude that NHS BSA told Dr A and/or the IFA that it would apply for IP 2014 on Dr A's behalf. The Adjudicator's view was that, on the balance of probability, it was unlikely that NHS BSA would have offered to carry out an activity which was outside its normal remit. The subsequent correspondence made no reference to an application for IP and there was no record of Dr A enquiring about it until approximately two years after the deadline.

- It is possible that there was a misunderstanding between the parties, as to NHS BSA's role in the process.
37. Dr A has explained that after receiving the Adjudicator's Opinion, he made a further attempt to obtain the IFA's contemporary notes for the December 2016 Call, but it was not possible to retrieve them. Dr A said he did not accept the findings in the Opinion, so the complaint was passed to me to consider.
38. NHS BSA also provided additional comments, which are summarised below:-
- A valuation of Dr A's benefits was issued, on 17 March 2017, to the address it had on record at that time. On 5 April 2019, Dr A informed NHS BSA of a change to his address, but it is not aware of when he moved.
 - The information on the Scheme's website says that members must make their own arrangements when applying to HMRC for LTA protection.
 - If Dr A believed that an application for IP 2014 had been made on his behalf, it is worth noting that he did not contact NHS BSA to ask why he had not received notification of his LTA protection. Similarly, it does not appear that he contacted HMRC to discuss this matter.
 - Only at retirement did Dr A confirm that he had no other pension arrangements outside of the Scheme. This information was sought because it is a legislative requirement to establish if a member has used any of their LTA prior to the payment of benefits from the Scheme. In Dr A's case, he confirmed that he did not have any other benefits and provided details of his IP 2016.

Ombudsman's decision

39. Having considered the complaint submissions from both parties, and the additional comments, I agree with the Adjudicator's Opinion.
40. NHS BSA has set out its position that it would not offer to undertake an application for LTA protection on behalf of a Scheme member. It referred to the supporting information available on the Scheme's website during the period in question, which explained that members would need to apply to HMRC for LTA protection.
41. While it is possible that, during the December 2016 Call, NHS BSA could have incorrectly stated, or implied, that it would make the application for IP 2014, I find insufficient evidence to conclude, on the balance of probability, that this took place. I also note that NHS BSA did not issue any follow-up correspondence to indicate that it was undertaking an application on Dr A's behalf.

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42. Further, I agree with NHS BSA that it would be reasonable to expect Dr A to have enquired about the progress of the IP 2014 application that he believed NHS BSA was making on his behalf. No such enquiry was made until after the deadline had passed.

43. I do not uphold Dr A's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
29 January 2024