

## Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHS BSA

## Outcome

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

## Complaint summary

2. Mrs S complained that the overall service she received from NHS BSA relating to her request to claim her retirement benefits, was poor.

## Background information, including submissions from the parties

3. Mrs S was an active member of the 1995 section of the Scheme (**the 1995 Section**) from 21 December 1998 to 16 September 2005.
4. When Mrs S left NHS employment she was classed as a deferred member of the Scheme, with entitlement to retirement benefits payable from age 60.
5. On 3 May 2019, NHS BSA received a letter from Sheldon Flanders Financial Services (**Sheldon Flanders**) requesting information about Mrs S' deferred benefits, including the transfer value payable. The request included a letter of authority (**LoA**) signed by Mrs S, indicating her consent for NHS BSA to release information to Sheldon Flanders. The letter also asked that NHS BSA regard Mrs S' LoA as a permanent instruction until cancelled by Mrs S. The current and previous home addresses provided in the correspondence received by NHS BSA did not match the addresses held on its records.
6. NHS BSA wrote to Sheldon Flanders informing it that, as not all the information provided in the LoA matched its records, it was unable to disclose personal information about Mrs S. NHS BSA asked Mrs S to contact it directly to confirm her current home address, so it could update its records.
7. Sheldon Flanders responded on 6 June 2019 indicating that it had no knowledge of Mrs S as its client.

8. NHS BSA received no further correspondence from Mrs S and therefore her initial request remained on hold, pending further contact from her.
9. On 9 July 2019, NHS BSA wrote to Mrs S' at an address it had held on its records since 2005, informing her that she was able to access her annual benefit information via her Total Reward Statement (**TRS**) on its online portal.
10. On 15 November 2019, NHS BSA received a letter from a company called Release, requesting information about Mrs S' deferred benefits, including the transfer value payable. The letter included a LoA and stated the same current and previous home addresses for Mrs S as the initial request from Sheldon Flanders. As the information differed from the address held on its records NHS BSA asked Mrs S to contact it so she could complete and submit the transfer pack which was available on its website. The transfer pack was an essential part of NHS BSA's due-diligence measures for pension transfers to help avoid pension scams. NHS BSA did not receive a response to this request.
11. On 17 December 2019, NHS BSA wrote to Release about the TRS facility and to draw its attention to the estimate charge policy. On the same day, Release telephoned NHS BSA, and during the call it was confirmed that the LoA which Release had provided was invalid as it did not show Mrs S' National Insurance number or her Scheme reference number.
12. On 17 December 2019, NHS BSA wrote to Mrs S' using an address that had been quoted on a previous LoA, informing her that she could access her annual benefit information via her online portal. This was the same as the letter NHS BSA sent to Mrs S on 9 July 2019.
13. On 20 December 2019, NHS BSA received an email from Release chasing its original request of 15 November 2019. In response, NHS BSA informed it that the LoA was invalid and the TRS facility was available to Mrs S.
14. On 30 December 2019, NHS BSA received a further request from Release for the same benefit information. It provided an updated LoA signed by Mrs S.
15. On 3 January 2020, NHS BSA sent an estimate of retirement benefits to Mrs S' at the address provided on the LoA from Release.
16. On 16 January 2020, the letter sent out to Mrs S on 3 January 2020 was returned to NHS BSA by Royal Mail marked with; 'addressee gone away'.
17. On 20 January 2020, Release contacted NHS BSA in relation to Mrs S not having received any information regarding her pension. NHS BSA explained that the letter sent to Mrs S at the address provided had been returned 'addressee gone away', therefore it required a further LoA with Mrs S' current address before it could provide information to Release.
18. On 11 February 2020, NHS BSA received another LoA from Release. This was a copy of the version provided on 30 December 2019 but with a hand-written

annotation which indicated the address shown was Mrs S' former address. Release confirmed that Mrs S was no longer living at that address, but it did not provide her current address.

19. On 14 February 2020, NHS BSA confirmed to Release that the most recent LoA it had provided did not meet its required standards and it was unable to provide Release with information about Mrs S.
20. On 17 February 2020, NHS BSA received an updated LoA from Release. The address shown was different from the previous one provided.
21. Shortly after, NHS BSA informed Release that the new address for Mrs S did not match the latest home address on its records. As such, it needed confirmation of the current address directly from Mrs S in order to update its records.
22. On 2 March 2020, Mrs S sent a letter to NHS BSA confirming her current home address and said that she had moved to this address on 15 August 2019. The letter also authorised the provision of information to Release. This letter met NHS BSA's requirements for members' authority and so it provided Release with a copy of the estimate of retirement benefits issued in January 2020.
23. On 31 July 2020, NHS BSA received Mrs S' completed AW8 form requesting payment of her retirement benefits.
24. On 4 August 2020, Mrs S submitted a further claim for retirement benefits. However, as Mrs S was aged 54 on the date of her claim, she was not eligible to claim payment of her retirement benefits and so NHS BSA was unable to process her claim.
25. On 10 August 2020, NHS BSA wrote to Mrs S informing her of the position and said that she could claim actuarially reduced benefits from age 55 if she wished but that these payments would be reduced for early payment. The letter was sent to the address Mrs S provided on 2 March 2020.
26. On 9 October 2020, Mrs S emailed NHS BSA asking about the progress of her retirement application. NHS BSA informed her that her retirement application was not proceeding as she had not yet reached the Scheme's normal retirement date. It sent Mrs S a copy of its letter dated 10 August 2020 by email as she said she had not received the letter.
27. On 10 October 2020, Mrs S raised a formal complaint against NHS BSA as follows:
  - She was concerned and disappointed about the way NHS BSA had treated this matter.
  - She wanted to establish if she had a pension with NHS BSA. She said NHS BSA should know from its records that she had been subject to domestic abuse and so had no papers or details regarding her pensions.

- She could not locate the secure email with the letter dated 10 August 2020 attached, even though she had signed into her NHS pension account. She felt that NHS BSA had not dealt with her case appropriately, clearly, and in a timely manner.
  - She felt the estimate request form was not user-friendly or clear, and to be told the estimate was chargeable, just added “salt to the wound”, especially as her pension pot was a nominal amount and had reduced since March 2020.
28. On 6 November 2020, NHS BSA received Mrs S’ signed declaration confirming she wished to have her benefits put into payment on 12 November 2020. NHS BSA confirmed that because the value of the pension and lump sum benefits payable was nominal, Mrs S had the option to commute the pension into a ‘once and for all’ lump sum payment. Mrs S elected this option.
29. On 18 November 2020, NHS BSA issued a quote showing the amount Mrs S would receive if she opted to receive this one-off amount. It also included trivially commutation option forms for Mrs S to sign.
30. On 25 November 2020, NHS BSA processed the claim after receiving the completed paperwork. A retirement benefit notice was issued to Mrs S and the payment was authorised on the same day.
31. On 26 November 2020, NHS BSA issued a response to the complaint Mrs S raised on 10 October 2020, under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) and said:
- TRS constitutes the free annual estimate that members were entitled to receive. Where no TRS was available, NHS BSA would provide the information that would normally have been given on TRS. NHS BSA were legally entitled to levy a charge for providing some types of estimates and members are asked to check the Schedule of Charges on the NHS website.
  - On 21 January 2020, NHS BSA received the estimate it had sent on 3 January 2020 as a return to sender post item from Royal Mail. During February 2020, Release failed to provide a LoA that included Mrs S’ scheme reference or National Insurance numbers. A correctly completed LoA was only received on 2 March 2020.
  - NHS BSA were unable to uphold this part of Mrs S’ complaint for the following reasons:
    - (a) Its charging policy was in accordance with the legislation that allows pension schemes to recover the cost of providing some types of information.
    - (b) As it had to take its Data Protection responsibilities seriously, it required that all LoA’s submitted by third parties include a National Insurance or scheme reference number for the member

(c) The estimate of 3 January 2020 was sent to the address provided by Release.

- Mrs S' benefits could not be paid on age grounds until her 60th birthday. NHS BSA wrote to her on 10 August 2020 to explain the position and asked her to confirm when she wished to have her benefits put into payment. This letter was sent to her current address.
- Mrs S' signed declaration reached NHS BSA on 6 November 2020, confirming she wished to have her retirement benefits paid early with effect from 12 November 2020. Her award was calculated on 18 November 2020 and triviality commutation option forms were enclosed with its letter.
- NHS BSA was unable to uphold Mrs S complaint because its letter of 10 August 2020 was not returned undelivered by Royal Mail, so it had no reason to believe she had not received it. As NHS BSA did not uphold Mrs S' complaint, it also did not offer financial compensation.

32. On 26 February 2021, NHS BSA issued its stage two IDRP response and said:

- The enquiries Mrs S' advisers made between 2019 and 2020, did not meet NHS BSA's normal data protection requirements and it was unable to disclose Mrs S' personal information to Release. The security measures it applied were to prevent unauthorised access to personal information and ultimately, to protect the pension benefits of its members.
- The application Mrs S initially submitted did not reflect her actual entitlement and it could not be processed. NHS BSA immediately wrote to her to inform her of the position, but she stated she did not receive its letter. There is nothing on record that suggests the letter was not sent and NHS BSA was unable to conclude that it was at fault for the letter not reaching her. The later stages of Mrs S' application were processed promptly and within the timescales, it would normally expect.
- NHS BSA considered Mrs S' comments about the level of service she received and were sorry she was dissatisfied in this respect. Its view was that NHS BSA had taken what it considered to be appropriate measures to protect her interests and endeavoured to assist her at each stage of her retirement benefit application.
- For these reasons it did not agree that compensation was appropriate in these circumstances.

### **Summary of Mrs S' position**

- She does not know why NHS BSA sent post to her previous address and did not deal with Release. She is a vulnerable person and previous communications had been by email, so she could not understand why letters NHS BSA claim to have posted were not emailed to her instead.

- She does not know why NHS BSA failed to recognise an appropriate third-party authority from a regulated money advice charity.
- NHS BSA did not consider her circumstances or that she had to move address at short notice and often did not know some of the addresses she was residing at.
- NHS BSA did not consider that she was unable to easily access information online. NHS BSA mentioned the TRS facility, but she could not access that without sufficient information.
- NHS BSA blocked her enquiries and were evasive, unhelpful, and appeared not to take her personal circumstances into account. She said the letter issued by NHS BSA on 22 December 2021, showed its inability to consider her personal circumstances and to take responsibility and ownership. All NHS BSA needed to do was telephone her to establish facts and help progress matters.
- If her present husband had not been tenacious, she would have lost her pension entitlement.
- NHS BSA has caused her distress and inconvenience

### **Summary of NHS BSA's position**

- In respect of the enquiries Mrs S' advisers initially made on her behalf; these did not meet NHS BSA normal data protection requirements for third party requests. Particular care was needed in this respect because it had no prior contact from Mrs S since she left the Scheme in 2005. The security measures it applied served to prevent unauthorised access to members' personal information and ultimately, to protect the pension benefits held in the Scheme.
- The information the third parties initially provided about Mrs S' home address also appeared to be either conflicting or out of date. These factors meant it could not be certain that the authorisation provided was genuine and so it was unable to disclose personal or financial information to those parties.
- In respect of Mrs S' application for retirement benefits, the application she initially submitted in August 2020 did not reflect her actual entitlement, meaning it was unable to process her claim.
- Whilst Mrs S states she did not receive NHS BSA's letter of 10 August 2020, there is nothing on its records that would indicate the letter would not have been posted. It was unable to conclude that it was at fault for the letter not reaching Mrs S as intended. The later stages of her application were processed promptly and within the timescales, it would normally expect.
- Whilst it acknowledged Mrs S' frustration concerning the issues she highlighted, it did not find any maladministration on its part. It had taken what it considered to be appropriate measures to protect Mrs S' interests and endeavoured to assist her at each stage of her retirement benefit application.

## **Adjudicator's Opinion**

33. Mrs 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 set out below in paragraphs 34 to 38.
34. Over the course of several years Mrs S changed her address several times. NHS BSA could not have been aware of her changing circumstances or that she had been the victim of domestic abuse and could only follow its established process when it received the various LoA's which contained either missing or conflicting information.
35. Although NHS BSA recognised Release as an appropriate third-party authority, the information in the LoA's it provided conflicted and did not match the information NHS BSA held on its records for Mrs S. NHS BSA therefore could not release any of Mrs S' details or information about her Scheme benefits. As the initial LoA's did not meet NHS BSA's data protection requirements, it was reasonable for it to contact Mrs S for confirmation directly.
36. It was not until 2 March 2020, when Mrs S provided a letter with her current address that NHS BSA could be satisfied that she had given her consent for it to provide information to Release.
37. It was the Adjudicator's view that unless Mrs S had specifically asked NHS BSA to contact her by email then it was not wrong for NHS BSA to correspond by post if that was their normal process. Further, the letter of 10 August 2020 was correctly addressed based on the information NHS BSA held on its records at the time.
38. There was nothing to suggest that NHS BSA had been provided with information about Mrs S' personal circumstances. There was no doubt NHS BSA would have corresponded with Mrs S by email had it been aware of her circumstances and been asked to do so. However, as that was not the case it was not unreasonable that NHS BSA followed its normal procedures.
39. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome.

## **Mrs S' further comments**

40. Mrs S submits:
  - She completed the necessary to claim payment of her retirement benefits on her 55<sup>th</sup> birthday (20 October 2020). However, payment was only made in November 2020. NHS BSA having received the completed paperwork in good time.
  - She is on the dyslexic spectrum, as well as being a victim of domestic abuse, which was also the reason she had no papers regarding her NHS pension, so navigating the NHS website or completing the relevant forms was almost impossible.

- Whether NHS BSA's letter dated 10 August 2020 was returned undelivered by Royal Mail or not, does not mean it was received. A good and reasonable service should have led NHS BSA to follow up and check. NHS BSA were fully aware she wanted to claim payment of her retirement benefits when she was 55 and she started the process in good time.
- NHS BSA has not adequately explained why it did not deal with Release. She felt that NHS BSA's refusal to do so was unreasonable given that Release was supporting her through a difficult time. Even if NHS BSA felt the LoA did not meet its Data Protection requirements, all it needed to do was contact Release to explain in general terms what is required.
- If NHS BSA had acted in a reasonable and understanding manner, then by speaking with Release, the LoA requirements could have been met. NHS BSA blocked her from providing the details it required by not explaining clearly what was required.
- The various transcripts and recordings of the phone calls between her and NHS BSA show that it did not handle her claim appropriately, addressing the factors in this matter, often fobbing her off.

41. I note the additional points raised by Mrs S, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

42. Mrs S complained that the overall service she received from NHS BSA relating to her request to claim her retirement benefits was poor.
43. Mrs S contends that NHS BSA did not consider her personal circumstances. I have not seen any evidence to suggest that NHS BSA had been provided with any information about Mrs S' situation or that it had been notified about any change of address. While I acknowledge Mrs S' difficult personal circumstances, NHS BSA were clearly not aware of these and so could not have been expected to deviate from its established processes unless it was specifically asked to do so which in this case it was not.
44. In relation to NHS BSA's initial refusal to deal with Release, the Data Protection regulations require NHS BSA to exercise due diligence when dealing with personal data. It was entirely correct that it refused to deal with Release, or any other adviser, until it was satisfied that the firm concerned had been appointed by Mrs S to act on her behalf.
45. Mrs S initially completed an AW8 form in August 2020 following which NHS BSA wrote to her on 10 August 2020 informing her that it could not make payment as she was below the minimum retirement age and that she could claim actuarially reduced benefits from age 55 if she wished. That letter was sent to the address provided by



Mrs S. It is regrettable that this letter was not received by Mrs S but I do not find that NHS BSA can be held responsible that the letter failed to be delivered. I note that as soon as Mrs S told NHS BSA she had not received the letter, it immediately sent the letter by email.

46. I do not doubt Mrs S' recollection of the telephone calls she had with NHS BSA however as it has not been possible to obtain recordings or transcripts of the calls it would not be possible to say with any certainty whether Mrs S' request for her benefits were, as she says, dismissed in any way. I note however, that when Mrs S requested her retirement benefits to be paid from 12 November 2020 payment was made promptly on 25 November 2020.

47. I do not uphold Mrs S' complaint.

**Anthony Arter**

Pensions Ombudsman  
1 November 2022