

## Ombudsman's Determination

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

## Outcome

1. I do not uphold Mrs Y's complaint and no further action is required by NHS BSA.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs Y's complaint is that NHS BSA refused to allow her to commute her benefits under the Scheme as a lump sum, and that it provided incorrect and incomplete information when she was making an important retirement decision.

## Background information, including submissions from the parties

4. Mrs Y was a member of the 1995 section of the Scheme.
5. In March 2012, when Mrs Y was 53, she requested an estimate of what her benefits would be worth at age 53 and 60.
6. In October 2012, she asked for the same information, in order to make a comparison. She also says that, around this time, she asked NHS BSA why it had ignored her request to take the Scheme benefits as a lump sum. She also asked for a written explanation of the lump sum position, however this was not provided.
7. On 17 October 2012, Mrs Y asked NHS BSA to confirm if she was entitled to take her benefits as a lump sum. NHS BSA says it told her that she would need to complete an application before it could confirm whether this was possible.
8. NHS BSA sent Mrs Y several application forms, including one which specifically mentioned commuting Scheme benefits into a lump sum.
9. On 31 October 2012, under Part 3.1 of the Deferred Benefits Claim Form (AW8P), relating to the 1995 section, Mrs Y chose to take pension benefits early. She ticked the box that stated: -

“Early payment of deferred pension benefits. Your benefits will be actuarially reduced to take account of this.”

10. Within the same section, Mrs Y asked for benefits to be paid from 1 December 2012.

11. Mrs Y attached a covering letter to the application form, in which she stated as follows: -

“Thank you very much for your prompt response to my request.

When I contacted the helpline I enquired about the possibility of receiving a 100% Lump [sic] sum and the advisor said that it was a possibility but I had to write and request this to be considered.

I understand that there are circumstances in which a lump sum is allowed so please can you advice [sic] if I am eligible, and if so what this amount would be.”

12. On 9 November 2012, NHS BSA wrote to Mrs Y confirming that her request for early payment of her Scheme benefits was being processed, and confirmed what the final amounts payable would be.

13. On 20 November 2012, NHS BSA says Mrs Y contacted it, asking it to confirm if her request to take benefits as a lump sum would be granted. NHS BSA says it wrote to her, on the same day, to confirm the position regarding the lump sum. It outlined three different scenarios for taking lump sum benefits, however it also stated that these benefits would only become available at age 60. Mrs Y says she did not receive this letter.

14. On 1 December 2012, having received no further correspondence from Mrs Y about her choices, NHS BSA acted on her previous instruction and put her pension benefits into payment.

15. In September 2013, Mrs Y wrote to NHS BSA asking if her pension benefits could be stopped and commuted as a lump sum. I understand that NHS BSA confirmed this was not possible, because she had already started taking pension benefits.

16. In July 2015, Mrs Y complained to NHS BSA. She was unhappy that NHS BSA had told her that it was not possible to commute her pension because the capital value of her benefits exceeded the relevant limits. She also said it had given her conflicting information about whether commuting her pension into a lump sum was possible.

17. In September 2015, NHS BSA responded under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). The key points were: -

- Members of the 1995 section of the Scheme could convert their benefits into a one off payment provided (a) they retired on or after age 60, and (b) their total benefits in the Scheme did not exceed the relevant HMRC limits.

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- Because Mrs Y had claimed benefits before turning 60, commutation was not a possibility under HMRC rules.
  - However, the information NHS BSA had given her appeared to indicate that commutation was an option, therefore it apologised for unnecessarily raising her expectations. However, her pension benefits would remain in payment as they were payable for life.
18. Mrs Y disagreed with NHS BSA's response, so she appealed its decision. Among other things, she stated: -
- “The “apology” within this response reads as patronising and insincere. The admission of neglect is not condensed [sic] by any proposal of redress or compensatory actions, it's just superficial.”
19. In October 2015, NHS BSA responded under stage 2 of the Scheme's IDR. The key points were: -
- It was clear that Mrs Y had written to NHS BSA, on 17 October 2012, to ask if she could commute her pension. NHS BSA had then told her she would have to apply for this. Whilst this information was correct, it could have gone further and explained that, in her case, commuting was not an option due to her age.
  - However, it had written to her, on 20 November 2012, to explain this. A copy of the relevant letter was enclosed for her reference.
  - It acknowledged that it had given her incomplete information in October 2012. But it did not accept that this had caused her a loss, because an entitlement to be considered for commutation was not a guarantee to be accepted.
20. In December 2015, dissatisfied with NHS BSA's responses, Mrs Y referred her complaint to this Office.

## Adjudicator's Opinion

21. Mrs Y'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 briefly below: -
- NHS BSA had acknowledged that it could have given Mrs Y more information about commuting her benefits, however this was not maladministration.
  - The evidence indicated that in October 2012, NHS BSA correctly informed Mrs Y that she would be considered for commutation of her benefits. But there was no evidence that it had guaranteed this, and Mrs Y's covering letter indicated that she understood this was only a possibility.

- NHS BSA wrote to Mrs Y in November 2012 and explained that commutation was only possible from age 60 onwards. Mrs Y claimed she did not receive this letter. However, NHS BSA provided the Adjudicator with a copy. It had been correctly sent to the address held for her at the time.
- NHS BSA may have failed to provide information to Mrs Y previously, but it had made reasonable efforts to confirm the correct position, whilst there was still time for Mrs Y to change her mind about taking a reduced pension at 54.
- NHS BSA had misunderstood why Mrs Y was unhappy with its apology, but it had apologised if this caused her any offence.

22. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. NHS BSA provided no further comments. Mrs Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs Y for completeness.

### **Ombudsman's decision**

23. There is no further evidence that NHS BSA's letter of 20 November 2012 was sent to Mrs Y. However, based on the documentary evidence available, I consider it is more likely than not that it was sent, even if it was not ultimately received by Mrs Y. Whilst previous requests for information about commutation may have gone unanswered, the above letter confirmed the correct position.

24. In any case, Mrs Y attached a covering letter to the application form, in which she stated as follows: -

"When I contacted the helpline I enquired about the possibility of receiving a 100% Lump [sic] sum and the advisor said that it was a possibility but I had to write and request this to be considered.

I understand that there are circumstances in which a lump sum is allowed so please can you advice [sic] if I am eligible, and if so what this amount would be."

25. In my view, this demonstrates Mrs Y understood, firstly, that commuting her benefits was only a possibility that she would have to apply for and, secondly, that she did not know, at that stage, whether she was eligible.

26. Mrs Y states that she is aware of maladministration at NHS BSA, as she used to work for it. However, I can only consider the merits of her individual complaint. Based on the available evidence of her particular complaint, NHS BSA made reasonable efforts to inform her of the correct position regarding commutation of benefits, whilst there was still time for her to change her mind concerning the taking of a reduced pension at age 54.

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27. NHS BSA has also apologised if it unintentionally caused Mrs Y offence when it misunderstood what she meant when she said “patronising” and “insincere”. I agree with the Adjudicator that this was an honest mistake on NHS BSA’s part and that, in the circumstances, an apology is sufficient.
28. I do not agree with Mrs Y’s understanding of the Adjudicator’s covering letter. He did not state that I would agree with his Opinion. Rather, he stated: -
- “Please note: if I have said in my Opinion that an Ombudsman is unlikely to reach a different decision, and you decide to ask for an Ombudsman’s decision, it is possible that no award will be made by the Ombudsman, and any offer previously made to you by a party might be withdrawn by that party.”
29. This is a standard sentence, used to warn Applicants that if an offer has been made by the Respondent, it is possible that it may be withdrawn, there is a possibility that it may be withdrawn.
30. Therefore, I do not uphold Mrs Y’s complaint.

**Anthony Arter**

Pensions Ombudsman  
16 May 2017