

Ombudsman's Determination

Applicant	Mrs L
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Mrs L'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 L has complained that NHS BSA mishandled and delayed her request to transfer out of the Scheme, which caused her to miss the deadline for such a transfer.

Background information, including submissions from the parties

4. Mrs L was an active member of the Scheme. On 4 February 2015, Mrs L completed an NHS BSA UK Transfer Request form to initiate a transfer out of the Scheme.
5. In this form, she indicated that she was an active member of the Scheme and wished to transfer out into a plan with Standard Life. Mrs L was being represented by her husband's financial advisory firm **(the adviser)** in this matter – who also signed this form.
6. The declaration section of the form said:

“I have read the Leaving Early and Transferring Out Guide given to me by my employer when I left the NHS Pension Scheme.”
7. On 5 February 2015, Mrs L's adviser requested various information from the Scheme on her behalf, such as the plan's commencement date and the total contributions paid to date.
8. The last sentence of this letter said:

“The client is considering opting out but requires the transfer value first.”

9. On 3 March 2015, NHS BSA provided a cash equivalent transfer value (**CETV**) which was guaranteed for three months. This letter said that before the transfer could go ahead, Mrs L would need to complete form TV18, which was enclosed with the CETV.
10. On 9 March 2015, Mrs L completed and signed form TV18. Mrs L indicated that she wished to continue with the transfer of her pension benefits. Below this option, Mrs L was prompted to fill in the box attached to the following statement:

“I confirm that I have left NHS employment on...”
11. Mrs L completed this by writing: “not leaving, opting out”.
12. On 24 March 2015, NHS BSA received Mrs L’s completed forms. It has said that at the time, it was experiencing a high volume of requests for transfer payments.
13. On 6 April 2015, the Pension Schemes Act 2015 came into force placing restrictions on transferring out of unfunded public service pension schemes.
14. On 22 April 2015, NHS BSA informed Mrs L that the transfer value could not be paid to Standard Life because Mrs L was still a contributing member of the Scheme. NHS BSA could not proceed with the transfer at this point as the relevant paperwork had not been received in time.
15. On 27 June 2015 Mrs L’s husband, Mr L, made a formal complaint to NHS BSA under its Internal Formal Dispute Resolution procedure (**IDRP**) on behalf of Mrs L.
16. On 12 September 2015, NHS BSA responded under stage one of the IDRP – its response is summarised below.
 - For a transfer payment to be made, members must first have sight of a guaranteed CETV statement and the original transfer elections forms (TV18) must then be completed – both by the member and the receiving scheme – and returned to NHS Pensions within the three month guarantee period.
 - NHS BSA’s processes complied with the provisions of the Pensions Act 1995, which allows up to six months to make a transfer payment.
 - In these particular circumstances, given the restrictions that came into effect from 6 April 2015, Mrs L would have to leave the NHS Pension Scheme and make a valid transfer election before 6 April 2015, if the receiving arrangement is a defined contribution scheme.
 - As Mrs L was an active member of the Scheme, she was not in a position to transfer out of the Scheme so NHS BSA should not have issued a guaranteed transfer statement and the TV18 election forms.
 - Although Mrs L expressed an interest in the pension transfer before the April 2015 deadline, any request which did not meet the necessary requirements could not be treated as an application to make a transfer payment.
17. On 25 October 2015, Mr L replied to the IDRP on behalf of Mrs L. He said: =

- The fact that Mrs L could not transfer out in time as she was an active member was entirely the fault of NHS BSA, as Mrs L had notified NHS BSA that it was her intention to opt out on the application she submitted.
 - Mrs L's original request to transfer out was received by NHS BSA on 6 February 2015, where Mrs L ticked a box to say she was still an active member. NHS BSA had two months from this point to notify her of any opting out procedures required for the transfer to go ahead.
 - In NHS BSA's letter of 3 March 2015 to Mrs L, it was not suggested that Mrs L would need to do anything other than return the forms. Mrs L had over a month to comply with all of the requirements at this stage.
 - Mrs L's application to transfer out was received by NHS BSA on 24 March 2015, so it was received before 6 April 2015. NHS BSA could also have notified her at this point that she would need to follow the requirements to opt out.
18. On 30 November 2015, NHS BSA provided a response under stage two of IDRP, not upholding the complaint. This said:-
- On 24 March 2015, Mrs L's completed option forms were received, however, due to the high volume of transfer requests, it was not until 10 June 2015 that NHS BSA was in a position to write to Standard Life advising that the transfer could not go ahead.
 - Mr L has argued that NHS BSA should have notified them that Mrs L would need to opt out of the Scheme by the prescribed method. However, it was not unusual for NHS BSA to receive transfer requests from members still contributing to the scheme, therefore it would not have been easily apparent at the outset that Mrs L had misunderstood the procedure.
 - It was clear from the letter sent by Mrs L's adviser that there was an awareness of the requirement to opt out, and the adviser wished to obtain a transfer value quotation beforehand.
 - A member must complete form SD502 to opt out of the Scheme. Once this is completed, a decision to opt out takes effect from the first day of the next pay period following receipt of the form by the Mrs L's employer. The earliest date on which Mrs L could have opted out would have been 31 March 2015.
 - Mrs L would then have then needed to request a statement of entitlement from NHS BSA, which could not be provided until Mrs L's employer had confirmed final pay and membership details.
 - NHS BSA has three months in which to issue a statement of entitlement.
 - NHS BSA and other schemes had sought confirmation on the definition of 'an application' when the transfer restrictions were announced. HM Treasury set out the following process:-
- 1) The member requests a transfer value and is provided with a statement of entitlement guaranteed for a period of 3 months.

- 2) The member signs the option form electing to proceed with the transfer, which must be received before 6 April 2015.

19. In January 2016, the complaint was referred to this Office for an independent review.
20. In correspondence sent to my Adjudicator during the course of her investigation, NHS BSA further explained that the 'guaranteed' CETV sent in early March 2015 was not a valid statement of entitlement, as Mrs L was still an active member.

Adjudicator's Opinion

Mrs L'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:-

- Mrs L completed a UK Transfer Request form in February 2015 and in this, signed a declaration which said she had read the Leaving Early and Transferring Out Guide given to her when she left the NHS Pension Scheme.
- Mrs L's adviser had requested information around this time and specifically said, "the client is considering opting out but requires the transfer value first." Mrs L's adviser was aware that she would need to opt out but had wrongly assumed this could happen through the transferring out process itself.
- Mrs L and her adviser had some responsibility to establish the correct procedure for opting out before completing the UK Transfer Request form.
- NHS BSA mistakenly sent documents to Mrs L for enacting the transfer upon receiving the UK Transfer Request form, leading Mrs L to follow the incorrect course of action to effect the transfer. However, had NHS BSA, at this time, followed the correct course of action, it still would not have led to the transfer of Mrs L's benefits.
- This was on the basis that if in early March 2015, NHS BSA had notified Mrs L that she would need to opt out of the Scheme, rather than sent her option forms, the earliest date she would have effectively opted out would have been 31 March 2015.
- Once Mrs L had opted out, a series of steps would need to have been undertaken in order to meet the 6 April 2015 deadline. Her employer would have needed to submit membership and details and pay information to NHS BSA. NHS BSA would be required to send her a statement of entitlement and Mrs L would need to complete and return the option forms enclosed with this before 6 April 2015. It was highly unlikely that all of the steps outlined could have taken place before the deadline. Therefore, but for NHS BSA's error, Mrs L still would most likely not to have met the deadline.
- Also, although Mrs L had lost the opportunity to transfer out, it was difficult to establish a financial loss as Mrs L will still receive her pension.

- Although NHS BSA had caused Mrs L confusion and inconvenience in issuing the incorrect forms, this mistake alone was not significant enough to warrant compensation of £500, which is our minimum award.

21. NHS BSA accepted the Adjudicator's Opinion and had nothing further to add. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L, on behalf of Mrs L, provided his further comments and supporting documentation, both of which do not change the outcome. Mr L has provided a Self-invested Personal Pension (**SIPP**) illustration dated 9 March 2015 from the provider Mrs L had planned to transfer to, Standard Life, as well as an email concerning the transfer request of another member. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

22. Mr L has said that a reasonable person would, in the circumstances, have expected to be following the correct procedure. Mr L feels that NHS BSA failed in its duty of care. It is not disputed that NHS BSA made errors, but the question is what outcome would have followed but for these errors.
23. Turning to this specifically, Mr L challenges the Adjudicator's conclusion that Mrs L would still have been out of time had NHS BSA followed the correct course of action. He has highlighted that Mrs L began her transfer request on 4 February 2015.
24. Whilst Mrs L did complete the UK Transfer Request form on this date, what needs to be established is the earliest date which she could have opted out in the given situation. Although Mrs L had declared in the UK Transfer form that she had read the Leaving Early and Transferring Out Guide, contrary to the information in this, she completed the form without opting out. Therefore, it is likely that Mr and Mrs L would not have become aware of the correct process until NHS BSA had informed them of it.
25. NHS BSA responded to the submission of Mrs L's UK Transfer Request form on 3 March 2015 when it mistakenly sent her a statement with a guaranteed value. Therefore, NHS BSA was not able to address her request until March 2015. Consequently, if NHS BSA had informed Mrs L at this point that she would have needed to opt out before continuing with the transfer process, she nonetheless would not have been able to effectively opt out until 31 March 2015, as per NHS BSA's process.
26. Furthermore, there is nothing to suggest that NHS BSA ought to have reviewed and provided a response to Mrs L's UK Transfer Request form in February 2015.
27. Mr L has said that other pension schemes were able to proceed with a transfer with a week's notice. Whilst this may be the case, this matter concerns NHS BSA's process only. NHS BSA have operated within the timescales permitted.

28. Mr L does not accept that it is difficult to establish a financial loss in this matter. He has said that the pension in question, which remains in the Scheme, will probably equate to a value of £1,600 per annum and will pay a dependents pension of £800 per annum should Mrs L predecease him. He compares this to the scenario where Mrs L had transferred the pension in question into a SIPP and says that with reasonable growth Mrs L's fund could be worth £53,500. He says Mrs L would need to live into her 90's to obtain the same value from the Scheme pension.
29. I have considered the SIPP illustration provided, however, as the illustration highlights, the figures use assumptions based on current returns, so actual returns could differ. I note that the £53,500 value which Mr L refers to is on the basis of the higher assumption quoted. Investments may go up or down, a definitive sum cannot be assumed from any of these figures as they are estimated rather than guaranteed.
30. Mr L has provided an email concerning a transfer involving similar issues for one of his clients. He has said that NHS BSA denied Mrs L's transfer request but did not follow the same course of action in his client's case. He believes NHS BSA are acting inconsistently in doing so. However, without knowing the specific details of this case, it is not possible for me to comment any further.
31. I am satisfied that NHS BSA has acted in accordance with the Pension Schemes Act 2015, in not allowing the transfer and that the errors it made did not cause Mrs L a loss.
32. Therefore, I do not uphold Mrs L's complaint.

Anthony Arter

Pensions Ombudsman
30 March 2017

Appendix

Pension Schemes Act 2015

67. Rights to transfer benefits

Schedule 4 contains amendments that confer new statutory rights to transfer benefits.

68. Restriction on transfers out of unfunded public service defined benefits schemes: Great Britain

(1) The Pension Schemes Act 1993 is amended as follows.

(2) In section 95 (ways of taking right to cash equivalent), in subsection (2), after “occupational pension scheme” insert “that is not an unfunded public service defined benefits scheme”.

(3) In section 95, after subsection (2) insert—

“(2A) In the case of a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are

(a) for acquiring transfer credits allowed under the rules of another occupational pension scheme if—

(i) the benefits that may be provided under the other scheme by virtue of the transfer credits are not flexible benefits,

(ii) the trustees or managers of the other scheme are able and willing to accept payment in respect of the member’s transferrable rights, and

(iii) the other scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;

(b) for acquiring rights allowed under the rules of a personal pension scheme if—

(i) the benefits that may be provided under the personal pension scheme by virtue of the acquired rights are not flexible benefits,

(ii) the trustees or managers of the personal pension scheme are able and willing to accept payment in respect of the member’s transferrable rights, and

(iii) the personal pension scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;

(c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy requirements prescribed in regulations made by the Secretary of State or the Treasury;

(d)for subscribing to other pension arrangements which satisfy requirements prescribed in regulations made by the Secretary of State or the Treasury.

(2B)The Treasury may by regulations provide for sub-paragraph (i) of subsection (2A)(a) or (b) not to apply in prescribed circumstances or in relation to prescribed schemes or schemes of a prescribed description.

(2C)In subsections (2) and (2A) “unfunded public service defined benefits scheme” means a public service pension scheme that—

(a)is a defined benefits scheme within the meaning given by section 37 of the Public Service Pensions Act 2013, and

(b)meets some or all of its liabilities otherwise than out of a fund accumulated for the purpose during the life of the scheme.