

## Ombudsman's Determination

Applicant	Mr R
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. I do not uphold Mr R's complaint and no further action is required by NHS Business Services Authority.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr R's complaint against NHS BSA is regarding its refusal to accept his application to transfer to a Qualified Recognised Overseas Pension Scheme (**QROPS**) before the 2015 Pensions Scheme Act (**the Act**) restrictions became effective.
4. Mr R says his loss is that he has been unable to transfer his pension, and is therefore unable to manage his pension and will be subject to UK tax when he draws his pension despite not residing in the UK. He believes the financial loss will be significant but that it cannot be calculated until he retires, which will not be for approximately 20 years.

## Background information, including submissions from the parties

5. In August 2014, NHS BSA received a request for a cash equivalent transfer value (**CETV**) from deVere Group, Mr R's Independent Financial Advisors (**IFA**). However, the form was not fully completed as it did not contain receiving scheme details nor was the box ticked that confirmed that the receiving scheme was not yet known, NHS BSA returned the forms for completion.

6. On 17 September 2014, NHS BSA changed the application process to apply for a CETV and transfer out of the Scheme. The change was made due to an increase in pension liberation fraud across the pensions industry and measures put in place by The Pensions Regulator. As part of this change the required QROPS transfer forms were updated, and the incomplete form was no longer valid.
7. On 22 September 2014 NHS BSA informed deVere that there was a new procedure to acquire a CETV and that if the receiving scheme was not yet known, the box stating this would need to be ticked.
8. On 17 and 20 March 2015, NHS BSA received identical enquiries from Black Tower Financial, Mr R's current IFA, requesting information in relation to Mr R's pension, including a CETV. No transfer request forms were submitted.
9. On 31 March 2015, a new overseas transfer request form was completed by Mr R and the receiving Scheme. NHS BSA received this on 1 April 2015 via email, however it later informed Mr R that his application would not be processed as the application was received after 5 April 2015.
10. Mr R raised a complaint which was not upheld at either Stage One or Stage Two of the Internal Disputes Resolution Procedure (**IDRP**). NHS BSA state that the transfer application process is a two stage process where a statement of entitlement, or CETV, which is guaranteed for three months, is requested by the member and then, once in receipt of the statement of entitlement, the member signs an election form to proceed with the transfer. The signed election form is the application to pay the transfer value. Mr R had only completed the initial request prior to 5 April 2015. NHS BSA say that there was not enough time between receipt of his request on 1 April and the deadline of 5 April for a statement of entitlement to be produced, sent to Mr R and for Mr R to complete and return the election form requesting a transfer payment.
11. Mr R's position is shown below.
  - Changing the forms so close to the deadline and no longer accepting the previous forms demonstrates reluctance to accept applications.
  - Mr R states that he was informed over the telephone by NHS BSA that an application made prior to the 5 April 2015 deadline would be accepted.
  - NHS BSA originally said that his application had been received on 7 April 2015 after the deadline and then subsequently admitted that the application had been received on 1 April 2015 prior to the deadline.
  - NHS BSA now say that the application received on 1 April 2015 was not substantive as Mr R had not received a valuation but this was not brought up during IDRP Stage One.
  - Mr R says that the name of the form to request a CETV is misleading and that it misled him to believe that he was applying for a transfer payment not for a CETV.

12. During the investigation by this Office NHS BSA provided the following comments on the title of the form.
- NHS BSA do not believe that the name of the Transfers Overseas Request form is misleading, given that the form states at the top:

**“Transfer Overseas Request form**

**Please Note:** We cannot provide a transfer value if Part A and Part B of this form are not fully completed.”

- Additionally NHS BSA say that there is the note at the bottom of the form:

**“Note:** The transfer value will be sent to the member to pass on to their new pension provider or Independent Financial Adviser (IFA).”
- NHS BSA also state that the e-mail of 22 September 2014, to deVere Group clearly states:

“The member should download the Transfer Out Guide and application pack or the Overseas Transfer Out guide and application pack on our website here <http://www.nhsbsa.nhs.uk/4210.aspx> and the member should send the fully completed transfer request form (as appropriate) to us to request a transfer value.”
- In addition NHS BSA say that the transfer process was undertaken with the assistance of an IFA, who would know that a member must firstly have sight of a transfer value before giving consent to pay benefits to a new provider.

## **Adjudicator’s Opinion**

13. Mr R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS Business Services Authority. The Adjudicator’s findings are summarised briefly below:
- The Adjudicator found that NHS BSA have applied the regulations and legislation correctly in this case. The transfer application process, under the regulations and legislation, is a two stage process where the second stage qualifies as an application. Mr R had only requested the first stage of the process both in August 2014 and April 2015. The first stage being an application for a CETV or statement of entitlement which is guaranteed for three months.
  - The second stage of the application process requires the member to be in receipt of a statement of entitlement, and the enclosed forms to be completed electing to proceed with the transfer. This process is in line with the Schemes Regulations and the Act which confirms at paragraph 68 (8); “The amendments made by this section have no effect in relation to an application made under section 95(1) of the Pension Schemes Act 1993 before 6 April 2015.” Section 95(1) of the Pension

Schemes Act 1993 only comes into effect if Sections 93A and 94 have already been met which relate to application for a statement of entitlement and the issuing of a statement of entitlement.

- There is a statutory requirement to provide a statement of entitlement within three months of an eligible request. It is unlikely that it would have been possible for NHS BSA to provide Mr R with a statement of entitlement following his request on 1 April 2015 before 5 April 2015. On the balance of probabilities, it is also unlikely that, even if a statement of entitlement had been issued before 5 April 2015, Mr R and the receiving scheme would have been able to complete the required forms and return them by 5 April 2015.
  - It is reasonable to say that Mr R ought to have been aware of the two stage transfer requirements and the deadline before which the transfer payment application must have been made. The Adjudicator referred to information stated in “Overseas Transfer Guide and application pack”, the application form within it, and the information available on the website which members were directed to by the declarations on the application forms that Mr R completed.
  - Mr R has said that he was only provided with the form to complete by his IFA and did not see the “Overseas Transfer Guide and application pack” or the information referred to under the declaration section of the application form. However, Mr R still signed the declaration saying that he had seen this information and the information was readily accessible online. The Adjudicator would expect an IFA to make a client aware of information such as this, especially as it was so readily available.
  - Mr R has said that the title of the application form misled him into believing that he was applying for a transfer payment rather than a CETV. The Adjudicator did not agree that the title on the form is misleading as it was enclosed in the “Overseas Transfer Guide and application pack” which explains the transfer process. The declarations also direct members to further information and ask that they sign confirming that they have read and understood this information. The form itself included references to a CETV including a reference in the note directly under the title of the form.
  - Mr R has commented that NHS BSA have not been consistent in the reasons that it has provided for refusing to process Mr R’s transfer. The Adjudicator does not agree that NHS BSA changed their position and only introduced the two stage transfer procedure as a reason for refusing the transfer at IDRPs Stage Two. NHS BSA also referred to it at IDRPs Stage One.
14. Mr R did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr R provided his further comments which are summarised below:
- Mr R says that the Adjudicator has applied the wrong reasonableness test and should instead be asking if it was reasonable for him to be aware “that an

Overseas Transfer Pack Application form completed prior to the deadline could not be treated as an application to make a transfer payment". Mr R said he was aware that a valuation was required but thought that an application for this also constituted an application for transfer payment.

- Mr R also says that neither he nor his IFA were aware that the two stages could not take place together. "After all, isn't a valuation a simple formulaic calculation that can be achieved by the touch of a button having inputted a few pieces of data?"
- Mr R states that the main reason given at IDRP Stage 1 was that NHS BSA were not able to process the application prior to the deadline and not that it was received after the deadline or that it was not valid because it was only the first stage of the application process. NHS BSA also seemed unaware until IDRP Stage 2 that only an application for payment was a valid application, therefore how would it be reasonable for either him or his IFA to be aware.
- Mr R maintains that the title of the form is misleading and "It is a general rule that "large print" such as a title, should not be overruled by "small print" buried within the associated lengthy booklet. He says that he and his IFA were not aware that an additional form was required.

15. The above comments 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 Mr R for completeness.

## Ombudsman's decision

16. I agree that NHS BSA have correctly followed the legislation and regulations in this case. I agree with the Adjudicator that there was enough information available for Mr R, and his IFA, to have been aware of the requirements to transfer. The third page of the "Overseas Transfer Guide and application pack" states:

"The position in respect of members transferring to a QROPS has not yet been confirmed, however, the same restriction is expected to apply and all properly completed option forms requesting the transfer payment must be received by NHS Pensions no later than **5 April 2015\***

\* Although the CETV is guaranteed under the Pensions Act for a period of three months which ends on or after 5 April 2015, applications for a transfer payment to schemes which provide flexible benefits received after 5 April 2015 will not be accepted." [Their emphasis]

17. The "Overseas Transfer Guide and application pack" provides enough information for members and IFA's to be aware of the restrictions which were introduced in April 2015. In addition, I would expect an IFA to be familiar with the legislative transfer requirements, including the normal timescales required to complete the prescribed

processes. The statutory requirement is for the scheme to complete stage 1 of the process within 3 months. If there was any outstanding uncertainty after reading the pack, and the information that it directed readers to online, I would expect the IFA to check with the Scheme exactly what needed to be supplied prior to 6 April 2015 to enable the transfer. I acknowledge that Mr R said he was informed over the telephone that the application had to be received prior to 6 April 2015, but there is no evidence to suggest that the IFA or Mr R clarified what constituted an application with the Scheme.

18. The two stage process is required to be sequential and cannot take place together. Whilst it may be possible to create an automated calculation to produce a CETV this is not always possible for every Scheme and every member. Even where the calculation can be automated it will require a number of checks before it can be issued. Once the member has obtained a CETV quotation from the receiving Scheme detailing what benefits can be bought with that CETV the member may decide that transferring is not the best option, or that they could obtain benefits more suited to their needs from a different receiving Scheme. Therefore, the legislation requires that the member has seen the CETV before an application for the transfer payment can be made. Given that the application for the CETV quotation was only received on 1 April 2015, that left only two working days for the scheme to produce the statement of entitlement, for Mr R to receive it, consider it, and return the second form asking for it to be paid. They say their actual processing time as the deadline became closer was as short as 4 weeks. On any view Mr R's application left insufficient time to complete the necessary process before the deadline.
19. I disagree that NHS BSA seemed unaware of what constituted a valid application until IDRP Stage Two. NHS BSA had published the information quoted above in both the pack and on the website to make members and IFA's aware of the restrictions coming into effect. The IDRP Stage One decision confirmed that an initial request for a CETV statement such as Mr R had made on 1 April is not, and cannot be treated as, an application to make the transfer payment.
20. I do not agree that the title of the form is misleading. I do not agree that there is any "small print" in the "Overseas Transfer Guide and application pack", nor that it is particularly "lengthy". The pack is 8 pages long including the front cover and the 3 page application form. It draws attention to the requirement for 'option forms requesting the transfer payment to be received no later than 5 April 2015'. It goes on to explain that although the CETV is guaranteed for a period of three months, applications for a transfer payment to schemes which provide flexible benefits received after that date will not be accepted. The guidance works on the understanding that an application for a transfer payment can only be made after receipt of a CETV. It does not create that situation. It simply reflects the pre-existing statutory process which was unaffected by the April 2015 changes

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21. I do not agree that Mr R completed the necessary application for transfer payment prior to the deadline and I do not consider that the Scheme was wrong to refuse to process his transfer application. Therefore, I do not uphold Mr R's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
5 May 2017